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Contents

Federal Register

Vol. 80, No. 63

Thursday, April 2, 2015

Separate Parts In This Issue

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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.

3 CFR

Proclamations:
9243.....18073
9244.....18075

Executive Orders:
13694.....18077

Administrative Orders:
Notices:
Notice of March 31, 2015 18081

10 CFR

Proposed Rules:
429.....17826
431.....17826

13 CFR

Proposed Rules:
130.....17708

17 CFR

Proposed Rules:
240.....18036

33 CFR
165 (3 documents) 17683, 17685, 17687

37 CFR
1.....17918
3.....17918
5.....17918
11.....17918
41.....17918

40 CFR
52 (2 documents) 17689, 17692
180.....17697
300.....17703

Proposed Rules:
52.....17712

45 CFR

Proposed Rules:
1355.....17713

49 CFR
173.....17706

50 CFR
17.....17974

Rules and Regulations

Federal Register
Vol. 80, No. 63
Thursday, April 2, 2015

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0187]

RIN 1625–AA00

Safety Zone; Sellwood Bridge Construction, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Portland, OR. This safety zone is necessary to ensure the safety of the maritime public and construction crews during construction of the Sellwood Bridge by prohibiting unauthorized persons and vessels from entering the regulated area unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

DATES: This rule is effective without actual notice from April 2, 2015 until June 10, 2015. For the purposes of enforcement, actual notice will be used from the date the rule was signed, March 19, 2015, through April 2, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0187]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ken Lawrenson, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest''. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable. Based on the date on which notice of construction was given, a notice and comment period could not be held before the need for the safety zone restrictions, which will go into effect March 19, 2015.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the work will commence and vessel movements in this area need to be restricted during the period of construction, which commences immediately.

B. Basis and Purpose

Coast Guard Captains of the Port are granted authority to establish safety zones in 33 CFR 1.05–1(f) for safety and environmental purposes as described in 33 CFR part 165.

The construction of bridges creates hazardous conditions for both the maritime public and the construction crews because of crane barges positioned within the temporary navigation channel of the river, anchor lines protruding outward from the barges, falling debris, and the suspension of heavy loads over the waterway. A safety zone is necessary to restrict vessel movement and reduce traffic going under the bridge during these critical lifts to ensure the safety of the maritime public and construction crews.

C. Discussion of the Rule

The rule establishes a Safety Zone in the Thirteenth Coast Guard District.

The safety zone created by this rule will cover all waters bank to bank of the Willamette River encompassed within chart 18528 starting at a line drawn from 45°27′57″ N/122°40′04″ W then east to 45°27′57″ N/122°39′51″ W then south to 45°27′47″ N/122°39′44″ W then west to 45°27′47″ N/122°40′04″ W then north to 45°27′57″N/122°40′04″ W.

The rule will be enforced while construction is underway. Construction is currently scheduled to take place from March 19, 2015 through 6:00 p.m. on April 2, 2015 and again starting at 7:00 a.m. on May 15, 2015 through 6:00 p.m. on May 27, 2015. The Coast Guard will notify mariners of any changes to the construction schedule and enforcement of this safety zone via a Broadcast Notice to Mariners and Local Notice to Mariners. This rule has been enforced with actual notice since March 19, 2015.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The Coast Guard has made this determination based on the fact that the safety zone created by this rule is small in size, and vessels may still transit

through the area at a reduced speed of five miles per hour.

2. Impact on Small Entities

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

This rule may affect the following entities some of which may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule. The safety zone will not have a significant economic impact on a substantial number of small entities because vessels may still be able to transit a one hundred thirty eight foot span of the temporary navigation channel at the center of the river at a reduced speed when deemed safe by the Captain of the Port or his designated representative. The Coast Guard has contacted one commercial boat operator to inform them of the safety zone and discuss the potential impact of the safety zone on operations. The operator indicated that impacts on business would be minimal. Additionally, the Coast Guard ensured the construction contractor contacted the affected small business entities most likely to be impacted.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. This rule involves the establishment of a limited access area. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–19(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–0187 to read as follows:

§ 165.T13–0187 Safety Zone; Sellwood Bridge Construction, Willamette River, Portland, OR.

(a) *Safety Zone.* The following area is a designated safety zone:

(1) *Location.* This safety zone will cover all waters bank to bank of the Willamette River encompassed within a line drawn from 45° 27′57″ N/122° 40′04″ W then east to 45° 27′57″ N/122° 39′51″ W then south to 45° 27′47″ N/122° 39′44″ W then west to 45° 27′47″ N/122° 40′04″ W then north to 45° 27′57″ N/122° 40′04″ W.

(2) *Enforcement Period.* This safety zone is in effect from March 19, 2015 through June 10, 2015. The rule will be enforced while in effect based on construction activity and the presence of construction equipment that create a safety risk to mariners. Based on the current construction schedule, the rule will be enforced from March 19, 2015 to 6:00 p.m. on April 2, 2015 and again starting at 7:00 a.m. on May 15, 2015 through 6:00 p.m. on May 27, 2015. The Coast Guard will inform mariners of any change to these periods of enforcement via Broadcast Notice to Mariners and Local Notice to Mariners.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative.

(c) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer or Oregon Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section.

Dated: March 19, 2015.

D. J. Travers

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2015–07591 Filed 4–1–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0155]

RIN 1625–AA00

Safety Zone: Marina del Rey Fireworks Show, Santa Monica Bay; Marina del Rey, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone in Marina del Rey around the fireworks launch site located on the south jetty. This temporary safety zone is necessary to provide for the safety of the waterway users during the fireworks display that will take place in the vicinity of the Marina del Rey Main Channel. Entry into this temporary safety zone will be prohibited unless specifically authorized by the Captain of the Port, Los Angeles—Long Beach, or her designated representative.

DATES: This rule is effective on April 10, 2015 from 8:00 p.m. to 10:00 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0155]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LCDR Brandon Link, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 521–3860, email *Brandon.M.Link@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as it would be impracticable due to the short notice of the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** due to the short notice of the event.

B. Basis and Purpose

The legal basis for this rulemaking can be found in 33 CFR 1.05–1 which authorizes the Coast Guard to establish and define safety zones. The fireworks fallout zone will impede normal boating traffic in the Marina del Rey Main Channel. Due to the potentially hazardous conditions, this temporary safety zone is necessary to ensure the safety of all waterway users.

C. Discussion of the Final Rule

The U.S. Coast Guard is establishing a temporary safety zone on April 10, 2015 encompassing all navigable waters from the surface to the sea floor within a 400 foot radius around the fireworks launch site on the south jetty in approximate position 33–57.742N 118–27.380W. This temporary safety zone will be enforced from 8:00 p.m. to 10:00 p.m. During the enforcement period, vessels are prohibited from entering into, transiting through, or anchoring within the designated area unless authorized by the Captain of the Port or her designated representative. Sector Los Angeles—Long Beach may be contacted on VHF–FM Channel 16 or

310–521–3801. General boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The implementation of this temporary safety zone is necessary for the protection of all waterway users. The size of the zone is the minimum necessary to provide adequate protection for the waterways users, adjoining areas, and the public. Any hardships experienced by persons or vessels are considered minimal compared to the interest in protecting the public. Accordingly, full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of the DHS is unnecessary.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor within the designated area during the designated enforcement times. This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Vessel traffic can pass safely around the area, (ii) this zone is limited in scope and duration, (iii) the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 prior to and while the safety zone is enforced.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 1.16 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add 165.T11–688 to read as follows:

§ 165.T11–688 Safety Zone: Marina del Rey Fireworks Show, Santa Monica Bay; Marina del Rey, California.

(a) *Location.* The limits of the safety zone are as follows: encompassing all navigable waters from the surface to the sea floor within a 400 foot radius around the fireworks launch site on the south jetty in approximate position 33–57.742N 118–27.380W.

(b) *Enforcement Period.* This section will be enforced on April 10, 2015. The temporary safety zone will be enforced from 8:00 p.m. to 10:00 p.m. General boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, vessels are prohibited from entering into, transiting through, or anchoring within the designated area unless authorized by the Captain of the Port or her designated representative. Sector Los Angeles—Long Beach may be contacted on VHF–FM Channel 16 or 310–521–3801.

Dated: March 19, 2015.

J. F. Williams,

Captain, U.S. Coast Guard, Captain of the Port Los Angeles—Long Beach.

[FR Doc. 2015–07594 Filed 4–1–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0163]

RIN 1625–AA00

Safety Zone: Tesoro Terminal Protest: Port of Long Beach Harbor; Pacific Ocean, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Pacific Ocean to encompass waters within the Port of Long Beach. The safety zone will be established as a result of specific waterside protest at Tesoro Terminals and in support of the safe navigation of all waterway users. Entry into the zone will be prohibited unless specifically authorized by the Captain of the Port, Los Angeles—Long Beach, or her designated representative.

DATES: This rule is effective without actual notice from April 2, 2015 until April 30, 2015. For the purposes of enforcement, actual notice will be used from the date the rule was signed, March 13, 2015, until April 2, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0163]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LTJG Jevon James, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 521–3860, email *Jevon.L.James2@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as it would be impracticable due to the short notice of the event and the limited duration this rule will be enforced.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** due to the short notice of the event and the limited duration this rule will be enforced.

B. Basis and Purpose

The legal basis for this rulemaking can be found in 33 CFR 1.05–1 which authorizes the Coast Guard to establish and define safety zones. With recent local labor disputes, protestors have targeted Tesoro Terminals within the Ports of Los Angeles—Long Beach. The Coast Guard anticipates water based demonstrations which may impede the safe navigation of vessels coming to and leaving Tesoro Terminals, as well as the demonstrators themselves. Thus, the Coast Guard is establishing a temporary safety zone on all navigable waters of the Pacific Ocean, from the surface to the sea floor, 100 yards in all direction of the following berths in the Port of Long Beach: Pier B 76–77, Pier B 84–87, and Pier T 121.

C. Discussion of the Final Rule

The U.S. Coast Guard is establishing a temporary safety zone encompassing all navigable waters from the surface to the sea floor, 100 yards in all direction of the following berths in the Port of Long Beach: Pier B 76–77, Pier B 84–87, and Pier T 121. The temporary safety zone will be enforced throughout each day. During the enforcement period, vessels are prohibited from entering

into, transiting through, or anchoring within the designated area unless authorized by the Captain of the Port or her designated representative. Sector Los Angeles—Long Beach may be contacted on VHF–FM Channel 16 or 310–521–3801. General boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The implementation of this temporary safety zone is necessary for the protection of all waterway users. The size of the zone is the minimum necessary to provide adequate protection for the waterways users, adjoining areas, and the public. Any hardships experienced by persons or vessels are considered minimal compared to the interest in protecting the public. Accordingly, full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DHS is unnecessary.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor within the designated area during the designated enforcement times. This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Vessel traffic can pass safely around the area, (ii) this zone is limited in scope and duration, (iii) the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 prior to and while the safety zone is enforced.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 1.16 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–687 to read as follows:

§ 165.T11–687 Safety Zone: Tesoro Terminal Protest: Port of Long Beach Harbor; Pacific Ocean, California

(a) Location. The limits of the safety zone are as follows: Encompassing all navigable waters of Captain of the Port Zone LA–LB from the surface to the sea floor, within 100 yards in all direction of the following berths in the Port of Long Beach: Pier B 76–77, Pier B 84–87, and Pier T 121.

(b) Enforcement Period. This section will be enforced throughout the entirety of each day from March 13–April 30, 2015. The general boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

(c) Regulations. In accordance with the general regulations in § 165.23 of this part, vessels are prohibited from entering into, transiting through, or anchoring within the designated area unless authorized by the Captain of the Port or her designated representative. Sector Los Angeles—Long Beach may be contacted on VHF–FM Channel 16 or 310–521–3801.

Dated: March 13, 2015.

J.F. Williams,

Captain, U.S. Coast Guard, Captain of the Port Los Angeles—Long Beach.

[FR Doc. 2015–07595 Filed 4–1–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0689; FRL–9925–53–Region 4]

Approval and Promulgation of Implementation Plans; Alabama; Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve in part and disapprove in part, the August 20, 2012, State Implementation Plan (SIP) submission, provided by the Alabama Department of Environmental Management (ADEM) for inclusion into the Alabama SIP. This final rulemaking pertains to the Clean Air Act (CAA or the Act) infrastructure requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP submission. ADEM certified that the Alabama SIP contains provisions that ensure the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in Alabama. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, interstate transport, and visibility protection requirements for which EPA is taking no action in this rulemaking, and provisions respecting state boards for which EPA is taking action to disapprove, EPA is taking final action to approve Alabama's infrastructure SIP submission provided to EPA on August 20, 2012, as satisfying the required infrastructure elements for the 2008 8-hour ozone NAAQS.

DATES: This rule will be effective May 4, 2015.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0689. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. Section 110(a) of the CAA generally requires states to make a SIP submission to meet applicable requirements in order to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. These SIP submissions are commonly referred to

as ''infrastructure'' SIP submissions. Section 110(a) imposes the obligation upon states to make an infrastructure SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the infrastructure SIP for a new or revised NAAQS affect the content of the submission. The contents of such infrastructure SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic structural SIP elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are summarized below and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).'' [1]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources [2]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas [3]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

On January 21, 2015, EPA proposed to approve in part and disapprove in part, Alabama's August 20, 2012, 2008 8-hour ozone NAAQS infrastructure SIP submission with the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the visibility requirements of section 110(a)(2)(J), which EPA will address in a separate action. EPA also proposed to disapprove Alabama's infrastructure submission for section 110(a)(2)(E)(ii) pertaining to state board requirements. *See* 80 FR 2851.

II. EPA's Response to Comments

EPA received one comment on its January 21, 2015, proposed action.

Comment: The commenter suggests that the EPA official who signed the proposed SIP approval/disapproval, the Deputy Regional Administrator for Region 4, was not delegated to sign SIP actions.

EPA's Response: The commenter is incorrect. Under CAA section 110(k) the EPA Administrator is tasked with acting on SIP submittals by approving or disapproving the submittal in whole or in part. It is the EPA's policy that, in order for other Agency management officials to act on behalf of the Administrator, the authority must be delegated officially. These official delegations are recorded in the ''EPA Delegations Manual.'' Under EPA Delegation 1–21. **Federal Register** (1200 TN 543, 4/22/2002), the EPA Administrator has delegated the authority to sign and submit proposed actions on SIPs for publication in the **Federal Register** to the Assistant Administrator for Air and Radiation and to Regional Administrators. This delegation allows for this authority to be redelegated to the Deputies of the authorized officials. Based on the authority to redelegate provided in Delegation 1–21, EPA Region 4 redelegated the authority to sign and submit for publication in the **Federal Register** proposed SIPs to the Deputy Regional Administrator (*See* EPA Region 4 Delegation 1–21). Therefore, an appropriate EPA official, the Region 4 Deputy Regional Administrator, signed and submitted the proposal to approve in part and disapprove in part Alabama's August 20, 2012, infrastructure SIP submission. Of note, an earlier Delegation 7–10. Approval/Disapproval of State Implementation Plans (1200 TN 441, 5/6/97) did not allow redelegation of the authority to act on proposed SIP actions beyond the Regional Administrator. Since Delegation 1–21 post-dates 7–10 and specifically addresses the authority at issue, the authority to sign and submit proposed actions on SIPs for publication in the **Federal Register**, it is the applicable delegation. Delegation 1–21 does not change the limitation on redelegation beyond the Regional Administrator found in Delegation 7–10 for final actions on SIPs.

III. Final Action

With the exceptions described below, EPA is taking final action to approve ADEM's infrastructure SIP submission, submitted August 20, 2012, for the 2008 8-hour ozone NAAQS because it meets the above described infrastructure SIP requirements. EPA is disapproving in part section 110(a)(2)(E)(ii) of Alabama's infrastructure submission because Alabama's August 20, 2012, submission did not contain provisions to comply with the requirements of section 128 of the CAA for state boards. This final approval in part and disapproval in part, however, does not include the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the visibility requirements of section 110(a)(2)(J), which are being addressed by EPA in a separate action. With the exceptions noted above Alabama has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to section 110 of the CAA to ensure that the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in Alabama.

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to other provisions of the CAA for submission of SIP revisions specifically applicable for attainment planning purposes. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] As mentioned above, this element is not relevant to today's rulemaking.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 19, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

■ 2. Section 52.50(e) is amended by adding a new entry for ''110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) * * *

EPA Approved Alabama Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	* * *
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards.	7/17/2012	4/2/2015	[Insert citation of publication].	With the exception of PSD permitting requirements for major sources of sections 110(a)(2)(C) and (J); interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II), 110(a)(2)(E)(ii), and the visibility requirements of section 110(a)(2)(J).

■ 3. Section 52.53 is amended by adding paragraph (a), and adding and reserving paragraph (b), to read as follows:

§ 52.53 Approval status.

* * * * *

(a) *Disapproval.* Submittal from the State of Alabama, through the Alabama Department of Environmental Management (ADEM) on August 20, 2012, to address the Clean Air Act (CAA) section 110(a)(2)(E)(ii) for the 2008 8-hour Ozone National Ambient Air Quality Standards concerning state board requirements. EPA is disapproving section 110(a)(2)(E)(ii) of ADEM's submittal because the Alabama SIP lacks provisions respecting state

boards per section 128 of the CAA for the 2008 8-hour Ozone National Ambient Air Quality Standards.

(b) [Reserved]

[FR Doc. 2015–07349 Filed 4–1–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0040; FRL–9925–46–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; State Boards Requirements; Infrastructure Requirements for the 2008 Lead and Ozone and 2010 Nitrogen Dioxide and Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions consist of adding a new regulation from the Virginia Administrative Code and a revised regulation which includes new, associated definitions. This rulemaking action also approves an infrastructure element directly related to the regulations being added for several previously submitted infrastructure SIPs for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS), the 2008 Ozone (O_3) NAAQS, the 2010 Nitrogen Dioxide (NO_2) NAAQS, and the 2010 Sulfur Dioxide (SO_2) NAAQS. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on June 1, 2015 without further notice, unless EPA receives adverse written comment by May 4, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0040 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. Email: powers.marilyn@epa.gov.

C. Mail: EPA–R03–OAR–2015–0040, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0040. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 128 of the CAA requires SIPs to include certain requirements regarding State Boards; section 110(a)(2)(E)(ii) of the CAA also references these requirements. Section 128(a) requires SIPs to contain provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On December 22, 2014, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its SIP for the Commonwealth of Virginia. The SIP revision consists of adding a new regulation, 9VAC5–170–210(A), and adding new, associated definitions to 9VAC5–170–20, all of which pertain to the conflict of interest requirements of CAA sections 128 and 110(a)(2)(E)(ii) for all criteria pollutants of the NAAQS.

In addition, this rulemaking action approves the section 110(a)(2)(E)(ii) infrastructure element from the following Virginia infrastructure SIP submittals for each identified NAAQS: March 9, 2012 for the 2008 Pb NAAQS, July 23, 2012 for the 2008 O_3 NAAQS, May 30, 2013 for 2010 NO_2 NAAQS, and June 23, 2014 for the 2010 SO_2 NAAQS (collectively, the Four Submittals). For the Four Submittals, EPA had previously approved those submittals as addressing certain requirements in section 110(a)(2) and specifically stated EPA would take later, separate action on the requirements in section 110(a)(2)(E)(ii) (which requires a state's SIP to meet the requirements of CAA section 128) for each of the NAAQS addressed.

II. Summary of SIP Revision

Virginia's December 22, 2014 SIP revision submittal consists of adding the new regulation, 9VAC5–170–210(A), and two new related definitions, ''Disclosure form'' and ''Potential conflict of interest,'' to 9VAC5–170–20. Regulation 9VAC5–170–210(A) requires

that the board (referring to the State Air Pollution Control Board (SAPCB) or its designated representative) and the director (referring to the director of the VADEQ or a designated representative) shall adequately disclose any potential conflicts of interest. The regulation also requires that such disclosure be made annually, as required by section 2.2–3114 of the Code of Virginia, and through the applicable disclosure forms set forth in sections 2.2–3117 and 2.2–3118 of the Code of Virginia. The added regulation also states that all terms used in the disclosure forms shall retain their meaning as set forth under the Virginia State and Local Conflict of Interests Act (section 2.2–3100 *et seq.* of the Code of Virginia) which includes the disclosure forms previously described in sections 2.2–3117 and 2.2–3118 of the Code of Virginia. In the Commonwealth of Virginia, only the SAPCB and the director of VADEQ (or their respective designated representatives) have the power to approve CAA permits and enforcement orders.

III. The State Boards Requirements and EPA's Analysis of Virginia's Submittals

As previously stated, section 128 of the CAA requires that SIPs include provisions which provide: (1) Any board or body which approves permits or enforcement orders under the CAA have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

For section 128(a)(1), Virginia previously submitted the provisions of Section 10.1–1302 of the Code of Virginia as a SIP revision on June 11, 2010; this SIP revision was subsequently approved by EPA on October 11, 2011. *See* 76 FR 62635.

To address requirements in section 128(a)(2), Virginia submitted the provisions of 9VAC5–170–210 on December 22, 2014. This regulation requires members of the SAPCB (or designated representatives) and the director of VADEQ (or a designated representative) to disclose any potential conflicts of interest. Virginia's regulation includes the board and the director (or their respective designated representatives) because only the SAPCB and the director have the authority to approve permits or enforcement orders under the CAA in Virginia. The regulation also requires that such disclosures be made annually through the applicable forms set forth in section 2.2–3100 *et seq.* of the Code of Virginia. Additionally, the SIP revision adds the terms ''Disclosure form'' and ''Potential conflict of interest'' to 9VAC5–170–20. ''Disclosure form'' is defined as the financial statement required by section 2.2–3114 of the Code of Virginia, which requires nonsalaried members of all policy and supervisory boards (including the SAPCB) and other persons occupying offices or positions of trust or employment in state government (including the director of VADEQ) to file the relevant disclosure form set forth in sections 2.2–3117 and 2.2–3118 in the Code of Virginia.

''Potential conflict of interest'' is also newly defined in 9VAC5–170–20 as a ''personal interest'' per section 2.2–3101 of the Code of Virginia, which defines ''personal interest'' as a financial benefit or liability accruing to an officer, employee, or an immediate family member which includes: (1) Three percent or more ownership in a business, (2) annual income exceeding $5,000 from ownership in a property or business, (3) salary, other compensation, fringe benefits, or benefits from using the property paid by a business or governmental agency that exceed $5,000 annually, (4) ownership of a property exceeding $5,000 in value, excluding ownership in a business, income, salary, other compensation, fringe benefits, or benefits from using the property, (5) personal liability incurred on behalf of a business exceeding three percent of the business's asset value, or (6) an option for ownership of a business or property if the ownership will consist of numbers (1) or (4) above.

EPA finds that 9VAC5–170–210 and the revised definitions in 9VAC5–170–20 require members of Virginia's board and the head of Virginia's executive agency (both of which have powers to approve CAA permits or enforcement orders) to adequately disclose potential conflicts of interest. Thus, the December 22, 2014 SIP submittal addresses the requirements in section 128(a)(2).

IV. Infrastructure Requirements and EPA's Analysis of Virginia's Submittals

Whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. In particular, the infrastructure requirements of section 110(a)(2)(E)(ii) require that each state's SIP meet the requirements of section 128.

On the following dates, and for the applicable NAAQS, Virginia submitted infrastructure SIP submittals to meet the requirements of CAA section 110(a)(2): March 9, 2012 for the 2008 Pb NAAQS, July 23, 2012 for the 2008 O_3 NAAQS, May 30, 2013 for the 2010 NO_2 NAAQS, and June 23, 2014 for the 2010 SO_2 NAAQS.

EPA has approved these submittals as meeting certain requirements or elements in section 110(a)(2) for the applicable NAAQS but has stated in each of these approvals that EPA would take later, separate action for requirements in section 110(a)(2)(E)(ii).[1] *See* 78 FR 58462 (September 24, 2013) (2008 Pb NAAQS), 79 FR 17043 (March 27, 2014) (2008 O_3 NAAQS), 79 FR 15012 (March 18, 2014) (2010 NO_2 NAAQS), and 80 FR 11557 (March 4, 2015) (2010 SO_2 NAAQS). See EPA's proposed approvals of Virginia's infrastructure SIPs for the 2008 O_3 NAAQS and the 2010 NO_2 and SO_2 NAAQS for a discussion of EPA's approach to reviewing infrastructure SIPs, including EPA's longstanding interpretation of the following: Requirements for section 110(a)(1) and (2); EPA's interpretation that the CAA allows states to make multiple SIP submissions separately addressing infrastructure SIP elements in section 110(a)(2) for a specific NAAQS; and the interpretation that EPA has the ability to act on separate elements of 110(a)(2) for a NAAQS in separate rulemaking actions. 78 FR 39671 (July 2, 2013) (2008 O_3 NAAQS), 78 FR 47264 (August 5, 2013) (2010 NO_2 NAAQS), and 79 FR 49731 (August 22, 2014) (2010 SO_2 NAAQS).

With the December 22, 2014 SIP submittal from Virginia, EPA finds that the Virginia SIP adequately addresses all requirements in CAA section 128 and section 110(a)(2)(E)(ii).[2] Thus, EPA is now approving the section 110(a)(2)(E)(ii) infrastructure element for the Four Submittals for the 2008 Pb, 2008 O_3, 2010 NO_2, and 2010 SO_2 NAAQS.

[1] EPA has also taken separate action to approve the prevention of significant deterioration portions of section 110(a)(2)(C), (D)(i)(II), and (J) for the Virginia submittals for three of these NAAQS. *See* 79 FR 10377 (February 25, 2014) (2008 Pb NAAQS) and 79 FR 58682 (September 30, 2014) (2008 O_3 NAAQS and 2010 NO_2 NAAQS).

[2] As noted previously, the Virginia SIP already includes a provision which addresses section 128(a)(1). *See* 76 FR 62635.

V. Final Action

EPA is approving Virginia's December 22, 2014 SIP revision that addresses the requirements of sections 128 and 110(a)(2)(E)(ii) of the CAA for all criteria pollutants of the NAAQS. EPA is also specifically approving the following Virginia submittals as addressing the requirements in section 110(a)(2)(E)(ii) of the CAA: The March 9, 2012 submittal for the 2008 Pb NAAQS, the July 23, 2012 submittal for the 2008 O_3 NAAQS, the May 30, 2013 submittal for the 2010 NO_2 NAAQS, and the June 23, 2014 submittal for the 2010 SO_2 NAAQS. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 1, 2015 without further notice unless EPA receives adverse comment by May 4, 2015. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.'' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VII. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of 9VAC5–170–210 and related definitions of 9VAC5–170–20 (both regarding disclosure of conflict of interests), with a state effective date of November 19, 2014. These regulations are discussed in section III of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

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

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

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

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, approving regulations meeting section 128 and approving the infrastructure element E(ii) for four Virginia NAAQS submittals, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 13, 2015.

William C. Early,

Acting Regional Administrator, Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420:

■ a. In the table in paragraph (c), revise the entry for ''Section 5–170–20.''

■ b. In the table in paragraph (c), add the heading ''Part IX Conflict of Interest'' and the entry for ''Section 5–170–210'' in numerical order.

■ c. In the table in paragraph (e), revise the entries for ''Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS,'' ''Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS,'' ''Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS,'' and ''Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide NAAQS.''

The revisions and addition reads as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* *	*	*	* *	* *
9 VAC 5, Chapter 170 Regulation for General Administration				
Part I Definitions				
* *	*	*	* *	* *
5–170–20	Terms Defined ..	11/19/14	4/2/15 [*Insert* ***Federal Register*** *citation*]	Docket #2015–0040. Revised to add the terms disclosure form and potential conflict of interest.
* *	*	*	* *	* *
Part IX Conflict of Interest				
5–170–210	General	11/19/14	4/2/15 [*Insert* ***Federal Register*** *citation*]	Docket #2015–0040. Does not include subsection B

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	* * *

* * * * * (e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	Statewide	3/9/12	9/24/13, 78 FR 58462.	Docket #2012–0451. This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources), (D)(i)(I), (D)(i)(II) (for the visibility protection portion), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M).
		3/9/12	2/25/14, 79 FR 10377.	Docket #2011–0927. This action addresses the following CAA elements, or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J) with respect to the PSD elements.
		12/22/14	4/2/15 [*Insert* ***Federal Register*** *citation*].	Docket #2015–0040. Addresses CAA element 110(a)(2)(E)(ii).
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS.	Statewide	5/30/13	3/18/14, 79 FR 15012.	Docket #2013–0510. This action addresses the following CAA elements, or portions thereof: 110(a)(2) (A), (B), (C), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M) with the exception of PSD elements.
		5/30/13	9/30/14, 79 FR 58686.	Docket #2013–0510. This action addresses the following CAA elements, or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J) with respect to the PSD elements.
		12/22/14	4/2/15 [*Insert* ***Federal Register*** *citation*].	Docket #2015–0040. Addresses CAA element 110(a)(2)(E)(ii).
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	Statewide	7/23/12	3/27/14, 79 FR 17043.	Docket #2013–0211. This action addresses the following CAA elements, or portions thereof: 110(a)(2) (A), (B), (C), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M) with the exception of PSD elements.
		7/23/12	9/30/14, 79 FR 58686.	Docket #2013–0211. This action addresses the following CAA elements, or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J) with respect to the PSD elements.
		12/22/14	4/2/15 [*Insert* ***Federal Register*** *citation*].	Docket #2015–0040. Addresses CAA element 110(a)(2)(E)(ii).
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide NAAQS.	Statewide	6/18/14	3/4/15, 80 FR 11557.	Docket #2014–0522. This action addresses the following CAA elements, or portions thereof: 110(a)(2) (A), (B), (C), (D)(i)(II)(PSD), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J)(consultation, notification, and PSD), (K), (L), and (M).
		12/22/14	4/2/15 [*Insert* ***Federal Register*** *citation*].	Docket #2015–0040. Addresses CAA element 110(a)(2)(E)(ii).

[FR Doc. 2015–07372 Filed 4–1–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0149; FRL–9923–82]

Difenoconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of difenoconazole in or on multiple commodities which are identified and discussed later in this document. Syngenta Crop Protection requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 2, 2015. Objections and requests for hearings must be received on or before June 1, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0149, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0149 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 1, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0149, by one of the following methods:

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

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

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of September 5, 2014 (79 FR 53009) (FRL–9914–98), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F8231) by Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide, difenoconazole in or on pea, and bean, dried shelled, except soybean, subgroup 6C at 0.2 parts per million (ppm); pea, vine at 10 ppm; pea, hay at 40 ppm; and bushberry, subgroup 13–07B at 3.0 ppm. The petition also requested that the existing tolerance for chickpea be removed. That document referenced a summary of the petition prepared by Syngenta, the registrant, which is available in the docket identified by docket ID number EPA–HQ–OPP–2014–0373, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

In the **Federal Register** of February 11, 2015 (80 FR 7559) (FRL–9921–94), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F8209) by Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR part 180 be amended by increasing existing tolerances for residues of the fungicide, difenoconazole in or on fruit, pome, group 11–10 from 1.0 to 3.0 ppm, and apple, wet pomace from 4.5 to 7.5 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the levels at which some of the tolerances are being established. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Subchronic and chronic studies with difenoconazole in mice and rats showed decreased body weights, decreased body weight gains and effects on the liver.

In an acute neurotoxicity study in rats, reduced fore-limb grip strength was observed on 1-day in males and clinical signs of neurotoxicity were observed in females at the limit dose of 2,000 milligrams/kilograms (mg/kg). In a subchronic neurotoxicity study in rats, decreased hind limb strength was observed in males only at the mid- and high-doses. However, the effects observed in acute and subchronic neurotoxicity studies are transient, and the dose-response is well characterized with identified no-observed-adverse effects-levels (NOAELs). No systemic toxicity was observed at the limit dose in the most recently submitted 28-day rat dermal toxicity study.

There is no concern for increased qualitative and/or quantitative susceptibility after exposure to difenoconazole in developmental toxicity studies in rats and rabbits, and a reproduction study in rats as fetal/offspring effects occurred in the presence of maternal toxicity. Although there is some evidence that difenoconazole affects antibody levels at doses that cause systemic toxicity, there are no indications in the available studies that organs associated with immune function, such as the thymus and spleen, are affected by difenoconazole.

EPA is using the non-linear (reference dose) approach to assess cancer risk. Difenoconazole is not mutagenic, and no evidence of carcinogenicity was seen in rats. Evidence for carcinogenicity was seen in mice (liver tumors), but statistically significant carcinomas tumors were only induced at excessively-high doses. Adenomas (benign tumors) and liver necrosis only were seen at 300 parts per million (ppm) (46 and 58 mg/kg/day in males and females, respectively). Based on excessive toxicity observed at the two highest doses in the study, the presence of only benign tumors and necrosis at the mid-dose, the absence of tumors at the study's lower doses, and the absence of genotoxic effects, EPA has concluded that the chronic point of departure (POD) from the chronic mouse study will be protective of any cancer effects. The POD from this study is the NOAEL of 30 ppm (4.7 and 5.6 mg/kg/day in males and females, respectively) which was chosen based upon only those biological endpoints which were relevant to tumor development (*i.e.,* hepatocellular hypertrophy, liver necrosis, fatty changes in the liver and bile stasis).

Specific information on the studies received and the nature of the adverse effects caused by difenoconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* on page 44 of the document titled ''*Difenoconazole: Human Health Risk Assessment for proposed new foliar uses on legume subgroup 6C and bushberry subgroup 13–07B; post-harvest uses on pome fruit group 11–10; and ornamental plants and vegetable transplants grown in both indoor and outdoor production facilities*'' in docket ID number EPA–HQ–OPP–2014–0149.

B. Toxicological Points of Departure/Levels of Concern

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

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

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

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	NOAEL = 25 mg/kg/ day. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1x	Acute RfD = 0.25 mg/kg/day. aPAD = 0.25 mg/kg/ day.	Acute neurotoxicity study in rats LOAEL= 200 mg/kg in males based on reduced fore-limb grip strength in males on day 1.
Chronic dietary (All populations)	NOAEL= 0.96 mg/ kg/day. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1x	Chronic RfD = 0.01 mg/kg/day. cPAD = 0.01 mg/kg/ day.	Combined chronic toxicity/carcinogenicity rat; dietary LOAEL = 24.1/32.8 mg/kg/day (M/F) based on cumulative decreases in body-weight gains.
Dermal Short-term (1–30 days)	Oral NOAEL = 1.25 mg/kg/day dermal absorption rate = 6%. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1x	LOC for MOE = 100	Reproduction and fertility Study rat; dietary Parental/Offspring LOAEL = 12.5 mg/kg/day based on decreased pup weight in males on day 21 and reduction in body-weight gain of F_0 females prior to mating, gestation and lactation.
Inhalation short-term (1–30 days). Inhalation and oral absorption assumed equivalent.	Oral NOAEL = 1.25 mg/kg/day. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1x	LOC for MOE = 100	Reproduction and fertility Study rat; dietary Parental/Offspring LOAEL = 12.5 mg/kg/day based on decreased pup weight in males on day 21 and reduction in body-weight gain of F_0 females prior to mating, gestation and lactation.
Cancer (oral, dermal, inhalation).	The Agency is using a non-linear approach based on the chronic POD to assess the carcinogenic potential of difenoconazole.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to difenoconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing difenoconazole tolerances in 40 CFR 180.475. EPA assessed dietary exposures from difenoconazole in food as follows:

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

Such effects were identified for difenoconazole. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the United States Department of Agriculture's (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/ WWEIA). As to residue levels in food, EPA assumed tolerance level residues and 100 percent crop treated (PCT) information.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, EPA used USDA Pesticide Data Program (PDP) monitoring data, average field trial residues for some commodities, tolerance level residues for the remaining commodities, and average percent crop treated for some commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to difenoconazole. Therefore, a separate quantitative cancer exposure assessment is unnecessary since the chronic dietary risk estimate will be protective of potential cancer risk.

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

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

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

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

For the chronic dietary exposure analysis, the Agency estimated the PCT for existing uses as follows:

Almond 5%, cabbage 2.5%, cucumbers 5%, garlic 5%, grape 5%, grapefruit 2.5%, onions 5%, orange 2.5%, pecan 2.5%, peach 1%, peppers

2.5%, pistachio 2.5%, pumpkin 2.5%, squash 5%, strawberry 2.5%, sugar beets 15%, tangerine 2.5%, tomatoes 25%, walnut 2.5%, watermelon 5%, and wheat 10%.

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

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

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

The drinking water assessment was performed using a total toxic residue (TTR) method which considers both parent difenoconazole and its major metabolite, CGA–205375, in surface and groundwater.

Based on the surface water concentration calculator (SWCC) and screening concentration in ground water (SCI–GROW) and pesticide root zone model ground water (PRZM GW) models, the estimated drinking water concentrations (EDWCs) of difenoconazole for acute exposures are estimated to be 20.0 parts per billion (ppb) for surface water and 1.77 ppb for ground water and for chronic exposure assessments are estimated to be 13.6 ppb for surface water and not detected for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 20.0 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 13.6 ppb was used to assess the contribution to drinking water.

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

Difenoconazole is currently registered for the following uses that could result in residential exposures: Treatment of ornamental plants in commercial and residential landscapes and interior plantscapes. EPA assessed residential exposure using the following assumptions: For residential handlers, adult short-term dermal and inhalation exposure is expected from use on ornamentals (garden/trees). For residential post-application, short-term dermal exposure is expected for both adults and children from post-application activities in treated gardens.

The scenarios used in the aggregate assessment were those that resulted in the highest exposures. The highest exposures consist of the following:

- Short-term dermal exposure to adults from post-application activities in treated gardens, and
- Short-term dermal exposure to children (6–11 years old) from post-application activities in treated gardens.

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

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

Difenoconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Difenoconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including propiconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk

assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov,* docket identification (ID) number EPA–HQ–OPP–2005–0497.

The most recent update for the triazoles was conducted on October 24, 2013. The requested new uses of difenoconazole did not significantly change the dietary exposure estimates for free triazole or conjugated triazoles. Therefore, an updated dietary exposure analysis was not conducted. The October 24, 2013 update for triazoles may be found in docket ID number EPA–HQ–OPP–2014–0149.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The available Agency guideline studies indicated no increased qualitative or quantitative susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to difenoconazole. In the prenatal developmental toxicity studies in rats and rabbits and the 2-generation reproduction study in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses than in the maternal/parental animals.

In a rat developmental toxicity study developmental effects were observed at doses higher than those which caused maternal toxicity. In the rabbit study, developmental effects (increases in post-implantation loss and resorptions and decreases in fetal body weight) were also seen at maternally toxic doses (decreased body weight gain and food consumption). In the 2-generation reproduction study in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses than in the maternal/parental animals.

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

i. The toxicity database for difenoconazole is complete.

ii. There are no clear signs of neurotoxicity following acute, subchronic or chronic dosing in multiple species in the difenoconazole database. The effects observed in acute and subchronic neurotoxicity studies are transient, and the dose-response is well characterized with identified NOAELs. Based on the toxicity profile, and lack of concern for neurotoxicity, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

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

iv. There are no residual uncertainties identified in the exposure databases. The dietary risk assessment is conservative, using tolerance level residues and 100 PCT for the acute assessment while the chronic assessment used USDA PDP monitoring data, average field trial residues for some commodities, tolerance level residues for remaining commodities, and average PCT for some commodities. These assumptions will not underestimate dietary exposure to difenoconazole. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to difenoconazole in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children. These assessments will not underestimate the exposure and risks posed by difenoconazole.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to difenoconazole will occupy 49% of the aPAD for all infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to difenoconazole from food and water will utilize 88% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of difenoconazole is not expected.

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

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

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 170 for adults and 190 for children. Because EPA's level of concern for difenoconazole is a MOE of 100 or below, these MOEs are not of concern.

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

An intermediate-term adverse effect was identified; however, difenoconazole is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is

at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for difenoconazole.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A, the chronic dietary risk assessment is protective of any potential cancer effects. Based on the results of that assessment, EPA concludes that difenoconazole is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement method, GC/NPD method AG–575B, is available for the determination of residues of difenoconazole *per se* in/on plant commodities. An adequate enforcement method, liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) method REM 147.07b, is available for the determination of residues of difenoconazole and CGA–205375 in livestock commodities. Adequate confirmatory methods are also available.

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

B. International Residue Limits

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

The Codex has an established MRL for the sum of difenoconazole and its metabolite, 1-[2-chloro-4-(4-chlorophenoxy)-phenyl]-2-(1,2,4-triazol)-1-yl-ethano), expressed as difenoconazole in or on milk at 0.02 ppm, which is the same as the recommended U.S. tolerance.

The Codex has not established an MRL for difenoconazole in or on pea and bean, dried shelled, except soybean, subgroup 6C; bushberry subgroup 13–07B; pea, field, hay; pea, field, vines; or apple, wet pomace.

The Codex has an established MRL for difenoconazole in or on pome fruit at 0.5 ppm for residues incurred from foliar uses of difenoconazole. This MRL differs from the recommended U.S. tolerance for difenoconazole in or on fruit, pome, group 11–10 at 5.0 ppm. The Codex MRL is not adequate to cover residues incurred from the proposed post-harvest uses in the United States; therefore, harmonization with Codex is not possible at this time.

C. Response to Comments

Several comments were received in response to the notice of filing, however, all were concerned with effects to bees and related to other petitions and chemicals contained in the same notice of filing, not difenoconazole.

D. Revisions to Petitioned-for Tolerances

The tolerance being established for the bushberry subgroup 13–07B is 4.0 ppm, not 3.0 ppm as proposed. This is due to the independent field trial determination which resulted in the exclusion of one of the trials from the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures. The tolerance being established for the pea and bean, dried shelled, except soybean, subgroup 6C tolerance is being set at 0.20 ppm, not 0.2 ppm, and is based on the current practice of setting tolerances to 2 significant figures. The established tolerance in milk is being increased from 0.01 ppm to 0.02 ppm because of the new pea hay and vine feedstuffs which significantly increased the maximum reasonably balanced dietary estimate for dairy cattle. Furthermore, the Agency is establishing tolerances for the fruit, pome, group 11–10 and apple, wet pomace (5.0 ppm and 25 ppm, respectively) at higher levels than requested (3.0 ppm and 7.5 ppm, respectively). The established tolerances for fruit, pome, group 11–10 take into account maximum tolerance estimates that may result from post-harvest application techniques for pome fruit. The established tolerances for apple, wet pomace was calculated based on the highest average field trial residues in or on apples and the average processing factor for wet pomace. Lastly, some commodity terms were modified to be consistent with Agency's preferred food and feed commodity vocabulary.

V. Conclusion

Therefore, tolerances are established for residues of difenoconazole, in or on bushberry subgroup 13–07B at 4.0 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.20 ppm; pea, field, hay at 40 ppm; and pea, field, vines at 10 ppm. Additionally, existing tolerances are modified as follows: Apple, wet pomace from 7.5 ppm to 25 ppm; fruit, pome, group 11–10 from 3.0 to 5.0 ppm; and milk from 0.01 to 0.02 ppm. Lastly, the existing chickpea tolerance is removed as unnecessary since it is now covered by the pea and bean, dried shelled, except soybean, subgroup 6C tolerance.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory

Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 25, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.475:

■ i. Remove ''Chickpea'' from the table in paragraph (a)(1).

ii. Add alphabetically the entries for ''Bushberry subgroup 13–07B'', ''Pea and bean, dried shelled, except soybean, subgroup 6C'', ''Pea, field, hay'', and ''Pea, field, vines'' to the table in paragraph (a)(1).

■ iii. Revise the entries for ''Apple, wet pomace'' and ''Fruit, pome, group 11–10'' in the table in paragraph (a)(1).

■ iv. Revise the entry for ''Milk'' in the table in paragraph (a)(2).

The amendments read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
* * * * *	
Apple, wet pomace	25
* * * * *	
Bushberry subgroup 13–07B	4.0
* * * * *	
Fruit, pome, group 11–10	5.0
* * * * *	
Pea and bean, dried shelled, except soybean, subgroup 6C	0.20
Pea, field, hay	40
Pea, field, vines	10
* * * * *	

(2) * * *

Commodity	Parts per million
* * * * *	
Milk	0.02
* * * * *	

* * * * *

[FR Doc. 2015–07354 Filed 4–1–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2014–0620; FRL–9924–66–OSWER]

RIN 2050–AG76

National Oil and Hazardous Substances Pollution Contingency Plan (NCP); Amending the NCP for Public Notices for Specific Superfund Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is adding language to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to broaden the methods by which the EPA can notify the public about certain Superfund activities.

DATES: This final rule is effective on May 4, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2014–0620. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Superfund Docket (Docket ID No. EPA–HQ–SFUND–2014–0620). This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Superfund Docket is (202) 566–0276. The EPA Docket Center (EPA/DC) is located at WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

General Information: Superfund, Toxics Release Inventory (TRI), Emergency Planning and Community Right-to-Know Act (EPCRA), Risk Management Program (RMP) and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

Technical information: Suzanne Wells at (703) 603–8863, (*wells.suzanne@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, Mail Code 5204P.

SUPPLEMENTARY INFORMATION:

I. Why is EPA publishing this final rule?

On October 1, 2014, EPA published a proposed rule entitled *National Oil and Hazardous Substances Pollution Contingency Plan (NCP); Amending the NCP for Public Notices for Specific Superfund Activities* (79 FR 59179) (hereafter the proposed rule). The EPA proposed to amend the NCP to expand the methods by which the EPA can notify the public about certain Superfund activities.

The NCP requires the lead Agency to publish a notice ''in a major local newspaper of general circulation'' when certain Superfund site-related activities occur. Many of these requirements were established in 1990 or earlier versions of the NCP when it was common practice for government agencies to publish notices of planned actions in newspapers. Today, multiple ways are used to notify the public about Superfund site-related activities that may be as or more effective than publishing notices in newspapers. For example, the public may be notified of certain actions the lead agency takes by distributing flyers door-to-door, mailing notices to homes, sending email notifications, making telephone calls or posting on Web sites. In certain cases, publishing a notice in a major newspaper of general circulation may not be the most effective way of notifying a community about a specific Superfund action, and may be less cost effective than other notification methods. EPA received seven comments on the proposed rule. EPA is addressing the comments and finalizing the amendment.

II. Background

A. What does this amendment do?

In the October 1, 2014, proposed rule, six sections of the NCP were proposed to be amended to change the public notice language in the NCP to allow adequate notice to a community via a major local newspaper of general circulation or by using one or more other mechanisms. Specifically, this amendment will add language to:

- § 300.415(n)(2)(i) That requires a notice of the availability of the administrative record file for CERCLA actions where, based on a site evaluation, the lead agency determines that a removal action is appropriate, and that less than six months exists before on-site removal action must begin.
- § 300.415(n)(4)(ii) that requires notification of the engineering evaluation/cost analysis (EE/CA) where the lead agency determines that a CERCLA removal action is appropriate and that a planning period of at least six months exists prior to initiation of the on-site removal activities.
- § 300.425(e)(4)(ii) that requires notification of releases that may be deleted from the National Priorities List (NPL).
- § 300.815(a) that requires notification of the availability of the administrative record file for the selection of a remedial action at the commencement of the remedial investigation.
- § 300.820(a)(1) that requires notification of the availability of the administrative record file when an EE/CA is made available for public comment, if the lead agency determines that a removal action is appropriate and that a planning period of at least six months exists before on-site removal activities must be initiated.
- § 300.820(b)(1) that requires notification of the availability of the administrative record file for all other removal actions not included in § 300.820(a).

B. What comments did EPA receive and how are they addressed?

EPA received seven comments on the proposed rule. Four of the commenters fully supported the proposed rule to add language to the NCP to broaden the methods by which the EPA can notify the public about certain Superfund activities. One commenter wrote ''It is difficult even for organized groups to constantly scan the local newspaper for publication notices. To have our rights for participation denied because we do not have time to peruse the local newspaper each and every day seems contrary to EPA's mission to inform and protect the public.'' Another commenter wrote ''The currently required method of publishing notices in 'major local newspapers of general circulation' is antiquated and frequently ineffective. By broadening the permitted methods of notification, linked when possible to Community Involvement Plans, EPA can better reach populations affected by the Superfund process.'' A third commenter wrote ''The proposed rule would broaden the notification methods the lead agency will be able to use in order to adopt a notification approach that is most effective at informing a community. . . . We fully support an expanded approach to notification that might include door to door flyers, mailing notices to homes, sending emails or making telephone calls.''

One commenter questioned why the proposed rule did not extend additional methods of public notification to the activities included under:

(1) section 117 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) including:

- Section 117(a) notification of the proposed plan (40 CFR 300.430(f)(3)(i)(A)),
- Section 117(b) notification of the final remedial action plan adopted (40 CFR 300.430(f)(6)(i)), and
- Section 117(c) notification of an explanation of significant differences after adoption of a final remedial action plan (40 CFR 300.435(c)(2)(i)(B));

(2) notice of availability of the amended Record of Decision (40 CFR 300.435(c)(2)(ii)(G));

(3) notices after EPA receives a letter of intent to apply for Technical Assistance Grant (40 CFR 35.4110); and

(4) notices of the starts and completions of five-year reviews or availability of draft or final five-year review reports.

EPA is required to follow the statutory public notice requirements associated with CERCLA section 117. Publication in a major local newspaper of general circulation will continue to be required for 1) notice of availability of the proposed plan (40 CFR 300.430(f)(3)(i)(A)), 2) notice of availability of the Record of Decision (40 CFR 300.430(f)(6)(i)), 3) notice that briefly summarizes the explanation of significant differences (40 CFR 300.435(c)(2)(i)(B)), 4) notice of availability and a brief description of the proposed amendment to the Record of Decision (40 CFR 300.435(c)(2)(ii)(A)), and 5) notice of availability of the amended Record of Decision (40 CFR 300.435(c)(2)(ii)(G)).

EPA did not propose revisions to 40 CFR 35.4110 that requires the Agency to publish a notice in a major local newspaper of general circulation when it receives a letter of intent to apply for a Technical Assistance Grant (TAG). EPA will consider whether revisions to 40 CFR 35.4110 are necessary to expand the methods by which it notifies the public of the receipt of a letter of intent to apply for a TAG. If EPA decides revisions are necessary, a proposed rule will be published.

Finally, there are no regulatory requirements to publish a notice in a major local newspaper of general circulation about the start and completion of a five-year review or the availability of a draft or final five-year review report. The Comprehensive Five-

Year Review Guidance (EPA 540–R–01–007, OSWER No. 9355.7–03B–P, June 2001) says ''[a]t a minimum, community involvement activities during the five-year review should include notifying the community that the five-year review will be conducted and notifying the community when the five-year review is completed.'' The Comprehensive Five-Year Review Guidance goes on to say the site team should determine the best means for notifying the community about the five-year review. Therefore, no revisions are necessary regarding public notification of the start and completion of five-year reviews or availability of draft or final five-year review reports.

One commenter suggested that while it need not be included in the new NCP language, EPA staff responsible for public notification should continuously evaluate the effectiveness of the public notice vehicles they use because ''[i]n this world of new media the best way to reach people varies by group and is continuously changing.'' The Agency agrees it is important to receive feedback from the community on a regular basis on the best ways to communicate with them. During the interviews conducted with community members as part of the development of a Community Involvement Plan, EPA staff receive feedback on the best methods to communicate with the public. EPA staff also take advantage of opportunities at public meetings and through informal ongoing discussions with community members about the ways they would like to receive information about site activities. Based on this feedback, the Agency adjusts its notification methods, if necessary.

Two commenters wrote the Agency ought to provide public notifications in English and in other prominent languages spoken in a community. The Agency agrees with these commenters. In communities where languages other than English are spoken, the Agency does seek to translate site-related information into the languages spoken in the communities. When appropriate, the Agency can provide translators at public meetings to communicate site-related information to community members who do not speak English. Some Agency staff are bilingual and are able to help communicate site-related information in prominent languages spoken in a community.

One commenter wrote that some communities are not knowledgeable about the Superfund process, and that it is important to provide training for community members in order to help them understand the Superfund process, and how they can be involved in the process. The Agency agrees with this commenter. EPA staff frequently provide presentations in communities about the Superfund process and how community members can be involved in the process. In addition, through programs like Technical Assistance Services for Communities (TASC), EPA works closely with communities to make sure they have the technical help they need. Sometimes, a community may need additional help to fully understand local environmental issues and participate in decision-making. The purpose of the TASC program is to meet this need.

Finally, one commenter supported continuing to publish notices in major local newspapers because some communities continue to rely on local newspapers to get their information. This final rule allows the Agency to publish notices in ''major local newspapers of general circulation,'' if the local newspaper is determined to be the most effective vehicle for informing a community about certain Superfund activities.

Thus, the amendment being promulgated is a useful and important change that will give the Agency the ability to determine the best method to notify the public about certain Superfund activities. EPA is promulgating the change to add language to 40 CFR part 300 as was proposed.

III. Statutory and Executive Order Reviews

As explained previously, this rule takes final action on an amendment for which we received comments in response to our October 1, 2014, *National Oil and Hazardous Substances Pollution Contingency Plan (NCP); Amending the NCP for Public Notices for Specific Superfund Activities.*

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. This action merely adds language to 40 CFR 300.415(n)(2)(i), 300.415(n)(4)(ii), 300.425(e)(4)(ii), 300.815(a), 300.820(a)(1), and 300.820(b)(1) to expand the methods by which the lead agency can notify the public about certain Superfund activities. This action will enable the lead agency to identify effective methods to notify the public. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), after considering the economic impacts of this action on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 19, 2015.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out above, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3CFR,

2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Section 300.415 is amended by revising paragraphs (n)(2)(i) and (n)(4)(ii) to read as follows:

§ 300.415 Removal action.

* * * * *

(n) * * *

(2) * * *

(i) Publish a notice of availability of the administrative record file established pursuant to § 300.820 in a major local newspaper of general circulation or use one or more other mechanisms to give adequate notice to a community within 60 days of initiation of on-site removal activity;

* * * * *

(4) * * *

(ii) Publish a notice of availability and brief description of the EE/CA in a major local newspaper of general circulation or use one or more other mechanisms to give adequate notice to a community pursuant to § 300.820;

* * * * *

■ 3. Section 300.425 is amended by revising paragraph (e)(4)(ii) to read as follows:

§ 300.425 Establishing remedial priorities.

* * * * *

(e) * * *

(4) * * *

(ii) In a major local newspaper of general circulation at or near the release that is proposed for deletion, publish a notice of availability or use one or more other mechanisms to give adequate notice to a community of the intent to delete;

* * * * *

■ 4. Section 300.815 is amended by revising paragraph (a) to read as follows:

§ 300.815 Administrative record file for a remedial action.

(a) The administrative record file for the selection of a remedial action shall be made available for public inspection at the commencement of the remedial investigation phase. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

* * * * *

■ 5. Section 300.820 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 300.820 Administrative record file for a removal action.

(a) * * *

(1) The administrative record file shall be made available for public inspection when the engineering evaluation/cost analysis (EE/CA) is made available for public comment. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

* * * * *

(b) * * *

(1) Documents included in the administrative record file shall be made available for public inspection no later than 60 days after initiation of on-site removal activity. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

* * * * *

[FR Doc. 2015–07474 Filed 4–1–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–2013–0205; Notice No. 15–10]

Clarification on Policy for Additional Name Requests Regarding Fireworks

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Clarification.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration's (PHMSA), Office of Hazardous Materials Safety (OHMS), is revising its application-approval procedures for previously approved firework designs and clarifying requirements for assigning Explosives (EX) Approval or Fireworks Certification (FC) numbers. It is not required or necessary for a firework manufacturer, or designated agent, to submit a new EX Approval application each time an additional item name is associated with a firework design type (described under UN0336, UN0335, and UN0431). PHMSA will no longer process additional item name EX Approval applications, effective immediately.

DATES: Effective April 2, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2013, PHMSA published a final rule under docket HM–257 titled, ''*Hazardous Materials: Revision to Fireworks Regulations (RRR).*'' The intent of the final rule was to provide regulatory flexibility in seeking authorization for the transportation of Division 1.4G consumer fireworks (UN0336 Fireworks). The final rule created a new type of DOT-approved certification agency, the Firework Certification Agency (FCA), which serves as an optional alternate approvals agency for fireworks manufacturers or designated U.S. agents to submit approval applications. These approvals issued by FCAs use a ''FC'' numbering system different from PHMSA's ''EX'' system. As mentioned above, the intent of the final rule was to provide regulatory flexibility in the approval process for 1.4G consumer fireworks. PHMSA found that the level of effort required to process that high-volume of Approval applications was not commensurate with the safety benefits required by the APA Standard 87–1 or the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180).

PHMSA's Approvals and Permits Division evaluates and approves as many as 1,000 applications annually for devices that are chemically and physically identical. The only variant is the item or device's name. PHMSA identified an additional area where can streamline and expedite the approval process. Typically, firework manufacturers request a revised EX Approval application each time they add or change the name of a firework. PHMSA has historically accepted each EX Approval application for each approved firework, to include the original diagram and chemical compositions sheets. This process provides no additional safety benefit. As a result, PHMSA will no longer provide these approvals.

By eliminating this redundant process, PHMSA will devote the saved time and resources toward other applications. As a result, we will reduce the wait-time for other Approval applications with more substantial safety benefits.

II. Guidelines for Adding or Changing a Firework Product's Name

In accordance with § 172.320, the EX-number, FC-number, product code or national stock number must be either

marked on the package for each Class 1 material contained therein or on the shipping paper in association with the shipping description as described in § 172.202(a). Product codes and national stock numbers must be traceable to the specific EX-number assigned by the Associate Administrator or FC-number assigned by a DOT-approved FCA.

For manufactures of consumer fireworks that wish to revise or update the product name, the HMR do not prohibit the change. In fact, the manufacturer may print, in any format desired, a new item name on any surface of the package. It is a common industry practice to print the EX or FC number on the fireworks device itself. We encourage industry to continue this practice as an additional means of identifying the product.

III. Conclusion

A change to the product name (not the proper shipping name) has no bearing on the safety of the firework, the original classification of the firework, or regulatory compliance. When applying for new fireworks applications, manufacturers may wish to simplify their procedures by using product codes or item numbers in accordance with Appendix D, Note 2 in the American Pyrotechnics Association, Standard 87–1 (December 1, 2001 Edition), [Incorporated By Reference (IBR), see 49 CFR 171.7(f)].

Issued in Washington, DC, on March 26, 2015.

Ben Supko,

Acting Deputy Associate Administrator Policy and Programs, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2015–07425 Filed 4–1–15; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 80, No. 63
Thursday, April 2, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 130

RIN 3245–AE05

Small Business Development Center Program Revisions

AGENCY: U.S. Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Small Business Administration (SBA) is seeking comments on this Advance Notice of Proposed Rulemaking (ANPRM) regarding the Small Business Development Center (SBDC) Program (the Program). Specifically, the SBA is seeking comments on development of potential proposed amendments to current regulations governing the Program, which is authorized by the Small Business Act. This ANPRM is being issued to commence the consultative process with stakeholders to examine several issues such as International Trade counselor certification requirements, steps to selecting State/Region Directors, procedures for international travel, clarifying the use of carryover funds and procedures regarding the determination to affect suspension, termination or non-renewal of an SBDC's cooperative agreement to name a few. This ANPRM also addresses other policy and procedural changes necessary for the implementation of the Program.

DATES: Comments must be received by June 1, 2015.

ADDRESSES: You may submit comments, identified by RIN 3245–AE05 by one of the following methods (1) Federal Rulemaking Portal: *www.regulations.gov,* following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: J. Chancy Lyford, Deputy Associate Administrator, SBDC Program, 409 Third Street SW., Room 6253, Washington, DC 20416. SBA will not accept comments submitted by email to this Advance Notice of Proposed Rulemaking.

SBA will post all comments to this Advance Notice of Proposed Rulemaking on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to the U.S. Small Business Administration, J. Chancy Lyford, Deputy Associate Administrator, SBDC Program, 409 Third Street SW., Room 6253, Washington, DC 20416, or send email to *sbdcregs@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public. Requests to redact or remove posted comments cannot be honored and the request to redact/remove posted comments will be posted as a new comment. *See* the *www.regulations.gov* help section for information on how to make changes to your comments.

FOR FURTHER INFORMATION CONTACT: J. Chancy Lyford, Deputy Associate Administrator for the SBDC Program, at 202–205–6766 or *chancy.lyford@sba.gov.*

SUPPLEMENTARY INFORMATION:

A. Statutory Authority

The Small Business Development Center (SBDC) Program (the Program) was established as a pilot program in 1977 and was later officially authorized in 1980 by the Small Business Development Center Act of 1980 (Pub. L. 96–302) now codified in section 21(a) of the Small Business Act, 15 U.S.C. 648. According to Section 21(a)(1) the purpose of the Program is to assist in establishing small business development centers explicitly to provide ''management and technical assistance'' to small businesses. Section 21(a)(3)(A) requires the SBA to consult with the recognized association of SBDCs in any rulemaking action for the Program. The issuance of this ANPRM is for purposes of undertaking the consultative process required by this section.

B. Background

The SBDC Program provides small businesses and aspiring entrepreneurs with a wide array of technical assistance to help support and strengthen business performance and sustainability as well as assist the U.S. economy by the creation of new business entities. Under the statute governing the SBDC Program, the Associate Administrator of Office of Small Business Development Centers (AA/OSBDC) holds responsibility for the general management and oversight of the SBDC Program by means of a cooperative agreement with the Recipient Organization.

The SBDC rules were last revised in 1995, *See* 60 FR 31506 (June 13, 1995). However, statute authorizing the SBDC Program has been amended numerous times since the last rulemaking. The annual Program Announcement and Notice of Award have become SBA's primary means of adjusting SBDC program rules and policies in the wake of statutory and other changes. The SBA believes it is time for regulations outlining guidance for the policies and procedures for the SBDC Program. It is the intention of the SBA that by soliciting public comments through this Advanced Notice of Proposed Rulemaking (ANPRM), the SBDC Program policies and procedures will be updated to reflect current best practices, become more streamlined, and less onerous on the SBDC grantees and SBA. SBA would like comment on changes to any of its existing policies and procedures as well as any new ideas for how to best implement and operate the SBDC Program.

Because of the amount of information contained within this ANPRM to address the necessary modifications, it is SBA's intention that the public, especially the recognized association and other stakeholders in the Program, be given ample opportunity to submit comments and help shape any possible future regulatory proposals.

This ANPRM solicits public comments on, among other things, implementation of statutory amendments, current practices, guidance on new grantee applicants, and provisions regarding the collection and use of individual SBDC client data. Many of the statutory changes have been significant, including amendment to the types of entities that are eligible to apply to be an SBDC grantee.

C. Definitions

The SBA asks for comment on: Whether or not new definitions for defining Program requirements are

needed, if there are other terms that are missing from the list below that need defining, and the draft definitions themselves.

The SBA seeks comment on the possible addition of and content of the following new definitions:

- *Associate Administrator/OSBDC.* The individual who is statutorily mandated to manage the SBDC Program.
- *Carryover funds.* Unobligated federal funds reallocated from one funding period to the next for specified purposes through an amendment to the Notice of Award.
- *District Office.* The local SBA office that, among other responsibilities, is charged with SBDC grant oversight responsibilities by ensuring: compliance with the Notice of Award; the local small business market needs are met by the SBDC; the regularly scheduled reviews are completed as required; and by collaborating with the SBDC to perform joint events and trainings.
- *State Director.* An individual for whose time and effort is 100% allocated to overseeing and managing the SBDC grant and other grants that provide comparable management and technical assistance to the small businesses community in accordance with the cooperative agreement.
- *Key personnel.* SBDC State/Region Directors and SBDC Service Center Directors or managers and International Trade Center Directors.
- *Matching Funds.* Funds that will be supplied to meet the statutory match requirements of the SBA SBDC grant. Matching Funds may include cash and non-cash equivalents, provided those forms of matching comply with the percentage restrictions on non-cash contributions and source restrictions on both forms of funds.
- *Notice of Award (NOA).* Also known as the Cooperative Agreement, the legal agreement between SBA and a Recipient Organization containing the terms and conditions under which SBA provides federal funds for the performance of SBDC activities.
- *Office of Small Business Development Centers (OSBDC).* The main program office which manages the funding, budget, programmatic oversight, and the establishment and maintenance of all program policy over the national SBDC network.
- *Program funds.* Also referred to as Project funds and defined as all funds authorized under the Cooperative Agreement including, but not limited to, federal funds, cash match, non-cash match from indirect costs, in-kind contributions, program income revenues, and funds authorized or reported as carryover.
- *Project Officer.* The individual in the SBA District Office appointed by SBA as the primary local contact for the SBDC. This person conducts regular compliance oversight as required by OSBDC working in conjunction with the Program Manager as well as other responsibilities.
- *Proposal.* Also known as the Application, this is the written submission by a new Applicant Organization or an existing Recipient Organization describing its projected SBDC activities for the upcoming Budget Period and requesting federal funding for use in its operations.
- *Prior Approval.* The written concurrence from the appropriate SBA official for a proposed action or amendment to the SBDC Cooperative Agreement.
- *Recognized Association.* The association established by statute whose members are SBDCs for the purpose of representing the SBDC's interests.
- *SBDC Service Center Director.* The individual responsible for SBDC program implementation and management at a Service Center within an SBDC network.
- *Specialized Services.* SBDC services other than counseling or training, *e.g.,* extensive research, hiring outside consultants for a particular client, translation services, etc.
- *Sub-recipient Organization/ Subcenters.* An entity, identified in the Cooperative Agreement, having a written agreement with the Recipient Organization that (1) receives federal financial assistance; and/or (2) administers matching resources for purposes of conducting SBDC activities.

D. General

SBA also seeks comment on any other information that should be considered for possible future regulatory proposals, including whether the addition of a general description of the authority establishing SBDCs, the governing documentation (Program Announcement), and the administration of the Program (Notice of Award) should be included in a future rulemaking.

E. Applications

By statute, any Women's Business Center operating pursuant to section 29 of the Small Business Act (15 U.S.C. 656) is now eligible to apply to be a new SBDC Recipient Organization. This ANPRM seeks comments on how to address statutory requirements for an SBDC Network to primarily utilize institutions of higher education and Women's Business Centers as new Service Centers.

SBA invites comments on the following:

Regarding the application procedures, how should SBA instruct all SBDC applicants to comply with the annual Program Announcement? Possible topics to comment on could include program integrity, allowable costs, conflicts of interests as well as format, conditions, submission requirements and due dates, for their new or renewal application to receive consideration.

Regarding new applications, how should the SBA clarify which Applicants within the State or Region of service are eligible to be an SBDC Recipient Organization? SBA believes a clarification is advisable regarding its standard policy of recruiting and selecting New SBDC Recipient Organizations using a fair and open competitive process, including an objective review and on-site sufficiency review before the Associate Administrator (AA) of the OSBDC makes a final selection.

Regarding renewal applications, what should SBA propose to describe the procedure when a Recipient is not renewed, either by SBA's or the Recipient's choice? Does any other aspect of renewal need to be considered for program regulatory proposals? Comments are requested as how best to update the process, including details on the negotiations with the District Office and how the Recipient Organization must submit the renewal application to the SBA.

F. Operating Requirements

This ANPRM requests comments on how to incorporate these statutory requirements in a future rulemaking.

The SBA seeks comments on the following:

Comments are requested on how each SBDC could comply with the requirement to maintain export and trade certified counselors on staff? Should there be a minimum number of export and trade certified counselors on staff? If so, what should be the minimum? Comments are requested on how the AA/OSBDC should set policy development and program administration, in consultation, to the extent practicable, with the Recognized Association.

Comments are requested on how to clarify the specific identification of a ''Small Business Development Center'' and whether that name should be a part of the official name of every SBDC Lead Center and Service Center within the SBDC network? How should SBA consider other names, such as those grandfathered in or subsequently waived by the AA/OSBDC? SBA

welcomes comments on any other information needed to be considered for program regulatory proposals at this time.

Currently, there are SBDC Networks with other identifying characteristics, such as ''Small Business *Technology* Development Centers.'' How should an SBDC Network seeking the designation as a ''Small Business Technology Development Center'' operate in accordance with SBA policies and procedures? Should there be different rules for Small Business Technology Development Centers? If so, what should they be?

Comments are requested on how the selection and retention of the SBDC State/Region Director should be accomplished. How should the policy guidelines already contained in the current Program Announcement and Notice of Award be incorporated? In particular, how should SBA mandate a Recipient Organization to have a State/Regional Director from another SBDC as a member of a selection panel? How much time should a State Director devote specifically to the SBDC grant? In addition, how much time should pass before any vacancy is reported to SBA? What percentage of their time and efforts should an Interim State/Region Director allocate to the SBDC program? What length of time should the appointment period for such Interim State/Region Director be? Should more time be needed for the Recipient Organization to hire a permanent State/Regional Director, how should it obtain prior approval from the AA/OSBDC?

The responsibilities of SBDC State/Region Directors are currently set forth in policy in the Program Announcement and Notice of Award. What percentage of time should the Director dedicate to the SBDC? How much of the Director's time should be devoted to other projects which complement the SBDC mission? Can the position be held by a company or contractor or other choice? What should be the minimum direct reporting authority that a State Director should have? Should it be to that of a college dean in a university setting or the third level of management or administration within a State Agency or should some other level within the organization be considered? If so, what should that level be?

Should SBA consider an amendment stating the names, addresses and phone numbers of small businesses or individuals receiving counseling assistance from an SBDC Network cannot be released to any person or entity outside of the SBDC without the consent of the client? Should a possible exemption be made if: SBA believes it necessary for grant oversight activities; SBA wants to conduct allowable client surveys or; the SBA Administrator is ordered to make such a disclosure by a court?

How should a SBDC Lead Center or a Sub-recipient Organization enter into a contract or grant with a Federal department or agency to provide specific assistance to small business concerns? Prior to bidding on a non-SBA federal award or contract, how should potential conflict of interest situations be handled by the SBDC Lead Center or Service Center? What should the SBDC Lead Center or Service Center be required to obtain from the AA/OSBDC regarding the subject and general scope of the award or contract to ensure that there is no conflict of interest with the SBA? How should the notification procedure indicate to SBA how the additional award will not conflict with the Cooperative Agreement and identify how the additional funding will be tracked to ensure separate sources and uses of funds?

G. Notice of Awards/Cooperative Agreements

Section 21(k)(3)(A) of the Small Business Act (15 U.S.C. 648(k)(3)(A)) states that in extending or renewing a cooperative agreement of a Small Business Development Center, the Administration shall consider the results of the examinations and accreditation reviews. In addition, 15 U.S.C. 648(k)(3)(B) states the Administration cannot renew or extend any cooperative agreement with a small business development center unless the center has been approved under the accreditation program conducted pursuant to this subsection, except that the AA/OSBDC can waive such accreditation requirement, at his or her discretion, upon a showing that the center is making a good faith effort to obtain accreditation. SBA seeks comment on how best to incorporate these statutory changes into a proposed rulemaking.

The SBA seeks comments on the following:

What language should SBA propose regarding cooperative agreements and contracts, including the incorporation of a common set of performance measures for SBDC Networks established by the SBA? What should the District Office, in conjunction with OSBDC, negotiate with the Lead Center? Some ideas include annual goals, milestones, activities for the cooperative agreement, or other information needed to be considered for the program?

For procurement/contracting policies and procedures, what should Recipient Organizations and Sub-Recipient Organizations have in the way of written procurement and contracting procedures in order to comply with the applicable federal procurement standards, the procurement procedures of the Recipient Organization, and openly compete their procurements? Are there any other issues regarding procurement/contracting that should be considered for program regulatory proposals at this time? While this and many other references are already established policy in the Program Announcement and Notice of Award, the SBA welcomes comments on new ideas, procedures and policies.

In the event of a Disaster, the AA/OSBDC can amend one or more cooperative agreements to authorize unanticipated out-of-state travel by SBDC personnel responding to a need for services in a Presidentially-Declared Major Disaster Area. How should notification of this type of authorization be accomplished? Some possible ideas are either through the publication of an SBA procedural or policy notice or through a Lead Center individual approval approach? Are there other or issues related to any program travel information that should be considered for program regulatory proposals at this time? What compliance standards should proposed and actual travel costs incurred under an emergency authorization use? Should they comply with the established rule, Program Announcement and OMB guidelines?

How should SBA clarify the conditions and procedures for effecting a suspension, termination or non-renewal of an SBDC's cooperative agreement? How should SBA set forth the administrative review procedures? Are there any other issues related to renewal needed to be considered for program regulatory proposals at this time? What should SBA consider in developing a new Administrative Procedure for Suspension, Termination and Non-Renewal? Should SBA include processes for taking action; notice requirements; relationship to government-wide suspension; and debarment? Also, what standards should SBA consider for administrative review of suspension, termination and non-renewal actions? Should SBA include details on a prescribed format; service; timeliness; standard of review; conduct of the proceeding; evidence; and decision? SBA seeks comments on the following.

(1) *Termination.* How should SBA consider whether a recipient organization can incur further obligations under the Cooperative Agreement after the date of termination

without express authorization to do so in the Notice of Termination? Are there other issues related to termination for program regulatory proposals? Should award funds be available for obligations incurred after the effective date of termination unless expressly authorized under the Notice of Termination or are there other ways to handle obligations incurred after termination? When a Cooperative Agreement has been terminated, how many days should the Recipient Organization have to submit final closeout documents to SBA? Can extenuating circumstances be considered and how should they be handled?

(2) *Non-Renewal.* How can SBA elect not to renew a Cooperative Agreement with a Recipient Organization? In undertaking a non-renewal action, how should SBA either choose not to accept or consider any application for renewal from the Recipient Organization? Under what circumstances could the Agency choose not to exercise option years remaining under the Cooperative Agreement? When would a Cooperative Agreement not be renewed? Should the Recipient Organization continue to conduct project activities and incur allowable expenses until the end of the current budget period? If a Recipient Organization decides to not renew its grant, must it notify the District Director and send a letter of intent to withdraw to the AA/OSBDC no less than 180 days before the end of its performance period or would there be another time period that would be more acceptable?

(3) *Suspension.* When should the suspension of a Recipient Organization begin? Should it begin on the date the Notice of Suspension is issued? How long should the period of suspension last? Should it last no longer than 6 months? At the end of the period of suspension, or any point during that period, how should the SBA either reinstate the cooperative agreement or commence an action for termination or non-renewal?

Why should the SBA be obligated to reimburse any expenses incurred by a Recipient Organization while its cooperative agreement is under suspension? Where SBA decides to lift a suspension and reinstate a Recipient Organization's cooperative agreement, under what circumstances should the Agency consider reimbursing a Recipient Organization for some or all of the expenses it incurred in carrying out project objectives during the suspension period? Should SBA state that there is no guarantee that the Agency will accept expenses incurred in furtherance of project objectives during the period of suspension or is there some other way this should be handled?

SBA seeks comment on whether, or not to add the following to the list of causes for suspension actions and if there are other causes not listed that should be considered:

- Poor performance;
- Unwillingness or inability to implement changes to improve performance;
- Failure to implement recommendations from programmatic reviews and/or examinations within the time frame established by the AA/OSBDC;
- Failure to implement recommendations from accreditation reviews within the time frame established by the accreditation committee and by the AA/OSBDC;
- Failure to maintain adequate client service facilities or service hours;
- Failure to maintain and enforce a conflict of interest policy;
- Failure to provide records to the SBA or the SBA OIG on demand;
- Failure to maintain records and;
- Failure to maintain and enforce a procurement policy.

How should SBA define the closeout procedures to be followed when an SBDC Lead or Service Center has left the program, either voluntarily or involuntarily to ensure that Program funds and property acquired or developed under the SBDC Cooperative Agreement are fully reconciled and transferred seamlessly between Recipient Organizations, sub-recipients, or other federal programs? How should the responsibility for conducting closeout procedures be vested with the Recipient Organization whose cooperative agreement is not being renewed? How should the procedures be documented and accomplished in accordance with the applicable property standards and the provisions of the SBDC Program regulations? Although stipulated in Subpart D of 2 CFR part 215, the SBA welcomes comments regarding this matter.

H. Financial Requirements

SBA seeks comments on the following:

How can SBA clarify the policy for carryover requests? Should a Recipient Organization request that SBA reauthorize any remaining unexpended and unobligated federal funds from their cooperative agreement for use in the ensuing Program/Budget Year or is there other information that needs to be considered when considering how to obligate the unexpended program funds? Should carryover requests not submitted within the timeframe designated by the AA/OSBDC be considered or are there other issues that need to be considered in extending the timeframe? Should carryover requests adhere to the format stipulated in the Program Announcement for renewal applications and contain the appropriate budget and narrative information along with a justification for the carryover? How should the AA/OSBDC determine whether good cause exists for funds remaining unobligated? If planned obligations could not be carried out because of a bona fide reason, how should the AA/OSBDC determine program objectives would be better served by deferring obligation of the funds to the following year or is there other information that needs to be considered? Should repeated requests for Carryovers (for more than two consecutive years) require substantial justification, and without this justification should they not be approved or is there other information that needs to be considered?

In addition, cash match should equal at least 50% of the SBA funds used by the SBDC. The remaining 50% of matching funds may be provided through allowable combinations of cash, in-kind contributions, or authorized indirect costs. Should costs or the values of third party in-kind contributions count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal Procurement Contract, or any other award of Federal funds or is there other information that needs to be considered? Should in-Kind services performed during the current Budget Period not be carried over to a subsequent Budget Period even if they were not previously claimed as match or is there other information that needs to be considered?

Should SBA require all foreign travel requests to be submitted to the appropriate District Director/Project Officer and to the OSBDC Program Manager for review and dispatch to the AA/OSBDC for final approval in accordance with the Program Announcement or is there other information that needs to be considered? Should foreign travel charged to the SBDC cooperative agreement or performed by SBDC staff while on duty for the Recipient Organization be approved in advance in accordance with the Program Announcement or is there other information that needs to be considered? Should planned foreign

travel costs allocable to the SBDC cooperative agreement for SBDC Network staff be approved by the SBA through the annual proposal process and should such planned costs be fully disclosed and justified in the budget narrative for Agency review or is there other information that needs to be considered? Should unanticipated foreign travel be approved in advance in accordance with the Program Announcement or is there other information that needs to be considered?

The SBA prohibits the use of Program Funds for purposes identified as unallowable following OMB guidance, including a Recipient Organization cannot use such funds to provide financial assistance, including subgrants, seed money for venture capital, or fund-raising activities and costs, including financial or capital campaigns, the solicitation of gifts and bequests, and similar activities intended to raise capital or obtain contributions. Should SBA identify further restrictions and prohibitions on expenditures that can be reimbursed from this grant or is there other information that needs to be considered?

SBA also welcomes comments on any other issues that the agency should address in a proposed rulemaking related to the SBDC Programs.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–06854 Filed 4–1–15; 8:45 am]

BILLING CODE 8025–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0040; FRL–9925–48–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; State Boards Requirements; Infrastructure Requirements for the 2008 Lead and Ozone and 2010 Nitrogen Dioxide and Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of meeting the requirements of Clean Air Act (CAA) section 128. This rulemaking action also proposes to approve an infrastructure element directly related to the regulations being added for several previously submitted infrastructure SIPs for the 2008 Lead National Ambient Air Quality Standards (NAAQS), the 2008 Ozone NAAQS, the 2010 Nitrogen Dioxide NAAQS, and the 2010 Sulfur Dioxide NAAQS. In the Final Rules section of this issue of the **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 4, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0040 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. Email: powers.marilyn@epa.gov.

C. Mail: EPA–R03–OAR–2015–0040, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0040. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the Commonwealth's submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 13, 2015.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2015–07371 Filed 4–1–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

Adoption and Foster Care Analysis and Reporting System

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Intent to publish a supplemental notice of proposed rulemaking.

SUMMARY: On February 9, 2015, the Administration for Children and Families (ACF) published a Notice of Proposed Rulemaking (NPRM) to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations to modify the requirements for title IV–E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV–E subsidized adoption or guardianship agreement. However, we did not propose that title IV–E agencies report data in AFCARS on American Indian and Alaskan Native children related to the Indian Child Welfare Act of 1978 (ICWA). In this notice, we are announcing that we intend to publish a supplemental notice of proposed rulemaking (SNPRM), which will propose that title IV–E agencies collect and report additional ICWA-related data elements in AFCARS. We will consider the public comments on that SNPRM (related to ICWA-related data elements) and the February 9, 2015 NPRM (related to all other data elements) and issue one final rule on AFCARS.

DATES: Effective April 2, 2015, ACF announces its intent to issue a SNPRM.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Children's Bureau, Administration on Children, Youth and Families, (202) 401–5789 or by email at *cbcomments@acf.hhs.gov.* Do not email comments on the NPRM to this address.

SUPPLEMENTARY INFORMATION: The Children's Bureau (CB) issued a Notice of Proposed Rulemaking (NPRM) on February 9, 2015 (80 FR 7132) (hereafter referred to as the 2015 NPRM) to modify the requirements for title IV–E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV–E subsidized adoption or guardianship agreement with the title IV–E agency. In that NPRM, we proposed to revise and update the AFCARS regulations at 45 CFR 1355.40 *et seq.* and the appendices to part 1355. However, we did not propose data elements that would provide information in AFCARS on American Indian and Alaskan Native children related to the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 *et seq.*) (ICWA).

We received comments to a previous NPRM and on a Federal Register Notice recommending data elements to address ICWA requirements. In the *Tribal Consultation Statement* section of the preamble to the 2015 NPRM, we acknowledged that we received comments asking for additional data elements that would address ICWA requirements and provide a comprehensive picture of the well-being of tribal children including: identifying whether a child is a member of an Indian tribe and the name of the Indian tribe, tribal notification, whether a tribal title IV–E agency intervened in a state title IV–E agency case, cultural activities that the child is participating in while away from his or her parents, judicial findings of active efforts, and preferential treatment for tribal placement resources. However, we did not propose in the 2015 NPRM to collect information related to ICWA because the enabling statute for AFCARS (section 479 of the Social Security Act (the Act)) had been interpreted as limiting data collection to information related to the title IV–B and IV–E program requirements.

Upon further consideration following the publication of the 2015 NPRM, we have determined that there is authority under the statute (section 479(c) of the Act) to collect ICWA-related data in AFCARS. Specifically, the statute permits broader data collection in order to assess the current state of adoption and foster care programs in general, as well as to develop future national policies concerning those programs. However, the statute includes limits on this broad interpretation of section 479 of the Act that we must take into consideration when contemplating collecting data related to ICWA in AFCARS, including: data collected under AFCARS must avoid an unnecessary diversion of resources from child welfare agencies (see section 479(c)(1) of the Act) and must assure the reliability and consistency of the data (see section 479(c)(2) of the Act).

Dated: March 25, 2015.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2015–07574 Filed 4–1–15; 8:45 am]

BILLING CODE 4184–01–P

Notices

Federal Register
Vol. 80, No. 63
Thursday, April 2, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Outreach

Advisory Committee on Beginning Farmers and Ranchers; Notice of Public Meeting

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA, 5 U.S.C. App.), notice is hereby given of a meeting via teleconference on April 17, 2015. A listen-only conference call line will be available from 3:00 p.m. through 4:00 p.m. EST for all who wish to listen in on the proceeding through the following telephone number: 800–369–1617 and enter passcode 5274714.

FOR FURTHER INFORMATION CONTACT: Mrs. Kenya Nicholas, Designated Federal Official, USDA OAO, 1400 Independence Avenue, Room 520–A, Washington, DC 20250–0170; Telephone (202) 720–6350; Fax (202) 720–7704; Email: *kenya.nicholas@osec.usda.gov.*

ADDRESSES: Mrs. Kenya Nicholas, Designated Federal Official, USDA OAO, 1400 Independence Avenue, Room 520–A, Washington, DC 20250–0170. Comments may also be faxed to (202) 720–7704.

SUPPLEMENTARY INFORMATION: Pursuant to FACA, 5 U.S.C. App., notice is hereby given that the Advisory Committee on Beginning Farmers and Ranchers will meet at 3:00 p.m. EST on Friday, April 17, 2015.

The Committee advises the Secretary of Agriculture on matters broadly affecting new farmers and ranchers including strategies, policies, and programs that will enhance opportunities and create new farming and ranching operations. During this meeting, the Committee will consider Department goals and objectives necessary to deliberate upon their newly developed set of recommendations for consideration by the Secretary. There will be an executive session which will be closed to the public during the last portion of the meeting to discuss administrative matters.

Signed in Washington, DC, this *26th* day of March 2015.

Carolyn C. Parker,

Director, Office of Advocacy and Outreach.

Advisory Committee on Beginning Farmers and Ranchers

Friday, April 17, 2015, 3:00 p.m.–4:00 p.m. EST.

(Public) Listen-Only Call-In Number 1–800–369–1617 and enter passcode 5274714#.

Agenda

Call to Order & Committee Members Roll Call —*3:00 p.m.*

- Kenya Nicholas, Designated Federal Officer (Welcome)

Deliberations on Draft Set of Recommendations—*3:05 p.m.*

- Gary Matteson, Chair and Peter Scheffert, Vice Chair
- Advisory Committee Members

Executive Session—Administrative (Closed to the Public) —*3:50 p.m.*

- Advisory Committee Members

Meeting Adjourned—*4:00 p.m.*

- Kenya Nicholas, Designated Federal Officer

[FR Doc. 2015–07418 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF AGRICULTURE

Agency Information Collection Activities: Proposed Collection; Comment Request—SuperTracker Information Collection for Registration, Login, and Food Intake and Physical Activity Assessment Information

AGENCY: Center for Nutrition Policy and Promotion (CNPP), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is an extension, without change, of a currently approved collection. The SuperTracker is an on-line dietary and physical activity self-assessment tool. The information collected can only be accessed by the user and will not be available to the Center for Nutrition Policy and Promotion (CNPP) or any other public agency for purposes of evaluation or identification.

DATES: Written comments must be received on or before June 1, 2015.

ADDRESSES: 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, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Shelley Maniscalco, Director, Office of Nutrition Marketing and Communication, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Shelley Maniscalco at 703–305–3300. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to CNPP Customer Support at (888) 779–7264.

SUPPLEMENTARY INFORMATION:

Title: SuperTracker Information Collection for Registration, Login and Food Intake and Physical Activity Assessment.

OMB Number: 0584–0535.

Expiration Date: September 30, 2015.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: SuperTracker is an Internet based diet and physical activity self-

assessment tool, which allows users to monitor their daily food intakes and physical activity information. Based on the Dietary Guidelines for Americans, the SuperTracker delivers nutrition education by allowing users to monitor their intake and explore ways to improve their food and physical activity choices. Motivational education messages are generated and tailored to the user's personal assessment results.

Individuals can use the SuperTracker without registration. However, all users may voluntarily enter and save information by registering with a username and password. The historical and trend data entered allows users to identify areas for improvement and reference short- and long-term changes to diet and physical activity behaviors. SuperTracker includes optional functions that consumers may use at their discretion, including a journaling feature to capture information for a selected category. Consumers may also post system-generated congratulatory and tip messages to Facebook or Twitter using their personal social media account. Through leveraging the user's existing social network, the user is more likely to experience positive feedback and encouragement in achieving their dietary and/or physical activity goals. Social media functionality is provided as a consumer benefit but does not impact consumer results or reports. Access to the SuperTracker is obtained at *SuperTracker.usda.gov.*

Affected Public: Individual/Households.

Estimated Number of Respondents: The following total annual burden estimates are based on the data obtained from current web trend tool, Google Analytics from January 2014–December 2014.

- The number of annual visitors to the Web site is expected to be about 11.2 million, and they will spend approximately 5 minutes one time only.
- Approximately 30 percent of annual visitors will complete a one-time registration, log-in and assessment for the revised online assessment tool. This information is based on data from Google Analytics (rounded up = 3.3 million).
- The average number of weekly visitors is approximately 200,000.
- 30 percent of the weekly visitors return each week to complete tracking activities (approximately 60,000).

Estimated Number of Responses per Respondent: 4.5.

Estimated Total Annual Responses: 11,200,000.

Estimated Time per Response: 0.236448065.

For the SuperTracker, it will take individuals approximately 1 minute (.0167) to initially register for a system logon ID and password. It typically takes users 30 seconds (.0083) to routinely login to the system and approximately 15 minutes (.25) to complete food and physical activity data entry log for 1 day. Repeat users will enter data on average 3 times per week. The amount of time spent completing entry and using functionality is estimated at 45 minutes per week.

Estimated Total Annual Burden on Respondents: 3,787,898 hours.

SUPERTRACKER BURDEN ESTIMATES

Affected public	Description of activity	(b) Form No.	(c) Number annual respondents	(d) Annual frequency of responses per respondent	(e) Estimated total annual responses (c×d)	(f) Hours per response	(g) Total annual burden (e×f)
Reporting Burden							
Individual and households.	Annual Website Visitors.	.....	11,200,000	1	11,200,000	0.05	560,000
	One time SuperTracker registration.	N/A	3,300,000	1	3,300,000	0.0167	55,110
	One time SuperTracker Log-in.	N/A	3,300,000	1	3,300,000	0.0083	27,390
	Food/Physical Activity Data Entry for 1 Week.	N/A	3,300,000	1	3,300,000	0.25	825,000
	Repeat Log-ins for 1 Year.	N/A	60,000	51	3,060,000.00	0.0083	25,398
	Repeat Food/Physical Activity Data Entries for 1 Year.	N/A	60,000	51	3,060,000.00	0.75	2,295,000
Total Annual Burden Est..	.....	.....	3,600,000	4.45	16,020,000	0.236448065	3,787,898

Dated: March 25, 2015.

Angela M. Tagtow,

Executive Director, Center for Nutrition Policy and Promotion.

[FR Doc. 2015–07592 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 3410–30–P

ARMED FORCES RETIREMENT HOME

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Proposed Master Development Plan for the Armed Forces Retirement Home in Washington, DC

AGENCY: Armed Forces Retirement Home (AFRH).

ACTION: Notice of Intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), AFRH plans to prepare a Supplemental Environmental Impact Statement (SEIS) for the proposed AFRH Master Development

Plan in Washington, DC. The SEIS will provide new analysis based on changes to the original master development plan, and changes in governing regulations.

DATES: *Effective:* April 3, 2015.

FOR FURTHER INFORMATION CONTACT: Justin Seffens, Corporate Facilities Director, AFRH, at (202) 541–7549, or Tim Sheckler, Project Manager, GSA, at (202) 401–5806. The U.S. General Services Administrator (GSA) is preparing the SEIS on behalf of AFRH.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 United States Code (U.S.C.) 4321–4347; the Council on Environmental Quality Regulations (Code of Federal Regulations (CFR), Title 40, chapter V, parts 1500–1508); and AFRH's Environmental Policy, 38 CFR part 200, AFRH plans to prepare a Supplemental Environmental Impact Statement (SEIS) for the proposed Master Plan Development at the Armed Forces Retirement Home in Washington, DC.

AFRH intends to prepare an SEIS to analyze the potential impacts resulting from the proposed changes to the original master development plan. Factors known to have changed since the previous study include construction of a new building, the Scott Building, on the AFRH campus; a $15 million restoration and expansion of the Lincoln's Cottage historic site; closure of the Heating Plant and inclusion of the Plant in the development area; the anticipated development of the McMillan Reservoir parcel immediately south of AFRH; and other area development.

Background

Established in 1851, the AFRH in Washington, DC continues its mission as a retirement community for military veterans. The 276-acre site is currently developed with 93 structures including the U.S. Soldiers' and Airmen's Home National Landmark District.

In 2002, the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107, 24 U.S.C. 411, *et seq.*) gave the AFRH, with approval of the Secretary of Defense, authority to dispose of any property by sale, lease, or otherwise that is excess to the needs of the AFRH. In 2010, The National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84, 24 U.S.C. 411) modified this authority to allow the Secretary of Defense (acting on behalf of AFRH) to lease non-excess property upon such terms as the Secretary considers will promote the purpose and financial stability of the Retirement Home or be in the public interest. Proceeds from such a lease are deposited to AFRH's Trust Fund. To implement these authorities, AFRH prepared a Master Development Plan and issued a Record of Decision in 2008 for its 276-acre campus in Washington, DC to guide the long-term use and development of the site. AFRH was unable to reach agreement with the initially selected developer. AFRH now anticipates releasing a new solicitation and selecting a new development partner.

Alternatives Under Consideration

AFRH will analyze the proposed action and no action alternatives for the proposed Master Development Plan. The proposed action alternative(s) will include development of a portion of the site for office, commercial, institutional, and residential uses. As part of the EIS, AFRH will study the impacts of each alternative on the human environment.

Scoping Process

In accordance with 40 CFR 1502.9(c)(4), there will be no scoping conducted for this SEIS.

Steven G. McManus,

Chief Operating Officer, Armed Forces Retirement Home.

[FR Doc. 2015–07621 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 3030–ZA–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Precision Image Corporation, 22424 76th Avenue Southeast, Woodinville, WA 98072

Order Denying Export Privileges

On October 28, 2013, in the U.S. District Court, Western District of Washington at Seattle, Precision Image Corporation, was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. § 2778 (2012)) (''AECA''). Specifically, Precision Image Corporation willfully exported from the United States technical data designated on the United States Munitions List, International Traffic in Arms Regulations, namely, a PCB, Sensor Motherboard, H–1 Gyro, PESK–7571, which is covered by Category XII(f) of the United States Munitions List, without having obtained from the United States Department of State a license or written approval for the export of this technical data. Precision Image Corporation was sentenced to 3 years of probation, criminal fine of $300,000 and an assessment of $400.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. § 1701–1706); 18 U.S.C. §§ 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. § 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. § 2778).'' 15 CFR. § 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR. § 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of its conviction.

BIS has received notice of Precision Image Corporation's conviction for violating the AECA, and have provided notice and an opportunity for Precision Image Corporation to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has received and reviewed a submission from Precision Image Corporation.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Precision Image Corporation's export privileges under the Regulations for a period of 10 years from the date of Precision Image Corporation's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Precision Image Corporation had an interest at the time of its conviction.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2006 & Supp. IV 2010)).

Accordingly, it is hereby ORDERED:

First, from the date of this Order until October 28, 2023, Precision Image Corporation, with a last known address of 22424 76th Avenue Southeast, Woodinville, WA 98072, and when acting for or on its behalf, its successors, assigns, directors, officers, employees, agents, or representatives, (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Precision Image Corporation by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Precision Image Corporation may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Precision Image Corporation. This Order shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 28, 2023.

Issued this 26th day of March, 2015.

Thomas Andrukonis,

Acting Director, Office of Exporter Services.

[FR Doc. 2015–07640 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is rescinding the administrative review of the antidumping duty order on honey from the People's Republic of China (''PRC'') for the period December 1, 2013 through November 30, 2014.

DATES: Effective April 2, 2015.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3927.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2014, based on a timely request for review [1] by the American Honey Producers Association and Sioux Honey Association (collectively, ''Petitioners''), the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on honey from the PRC covering the period December 1, 2013 through November 30, 2014.[2] The review covers three companies.[3] On March 17, 2015, Petitioners withdrew their request for an administrative review on all the three companies listed in the *Initiation Notice*.[4] No other party requested a review of these companies or any other exporters of subject merchandise.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, Petitioners timely withdrew their request by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding, in its entirety, the administrative review of honey from the PRC for the period December 1, 2013 through November 30, 2014.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the

[1] *See* Letter from Petitioners, Honey from the People's Republic of China: Request for Thirteenth Administrative Review, dated December 31, 2014.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 6041, 6044 (February 4, 2015) (''*Initiation Notice''*).

[3] The three companies are: Dongtai Peak Honey Industry Co., Ltd.; Kunshan Xinlong Food Co., Ltd.; and Lee Hoong Kee Ltd.

[4] *See* Letter from Petitioners, Thirteenth Administrative Review of the Antidumping Duty Order on Honey from the PRC: Petitioners' Withdrawal of Request for Administrative Review, dated March 17, 2015.

entries to which this administrative review pertained shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register,** if appropriate.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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 APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This 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: March 27, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–07599 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Ivon Castaneda, Inmate Number—99682–004, FCI Coleman Medium Federal Correctional Institution, P.O. Box 1032, Coleman, FL 33521,
Washington, DC 20230

On December 18, 2012, in the U.S. District Court, Southern District of Florida, Ivon Castaneda (''Castaneda''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Castaneda conspired, knowingly and willfully attempted to export defense articles, that is AR–15/M–16 firearm barrels, receivers, components, parts, and accessories, from the United States to Honduras without having first obtained a license or written approval from the U.S. Department of State. Castaneda was sentenced 37 months of imprisonment, two years of supervised release and fined a $200 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Castaneda's conviction for violating the AECA, and has provided notice and an opportunity for Castaneda to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Castaneda.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Castaneda's export privileges under the Regulations for a period of 10 years from the date of Castaneda's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Castaneda had an interest at the time of her conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until December 18, 2022, Ivon Castaneda, with a last known address of Inmate Number—99682–004, FCI Coleman Medium, Federal Correctional Institution, P.O. Box 1032, Coleman, FL 33521, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Castaneda by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Castaneda may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Castaneda. This Order shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until December 18, 2022.

Issued this 26th day of March, 2015.

Thomas Andrukonis,

Acting Director, Office of Exporter Services

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[FR Doc. 2015–07641 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Notice of Initiation of Changed Circumstances Review, and Consideration of Revocation of the Antidumping Duty Order in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a request from Pier 1 Imports (U.S.), Inc. (''Pier 1''), the Department of Commerce (the ''Department'') is initiating a changed circumstances review to consider the possible revocation, in part, of the antidumping duty (''AD'') order on wooden bedroom furniture from the People's Republic of China (''PRC'') with respect to jewelry armoires that have at least one front door.

DATES: Effective April 2, 2015.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Valerie Ellis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5193 or (202) 482–4551, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department published *the Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005). On February 13, 2015, Pier 1, an importer of the subject merchandise, requested revocation, in part, of the AD order pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act'') and section 351.216(b) of the Department's regulations, with respect to certain jewelry armoires with at least one front door. The scope of the order currently excludes certain jewelry armoires with at least one side door but does not exclude jewelry armoires with at least one front door. Pier 1 proposes adding the phrase ''or at least one front door'' to the existing exclusion for jewelry armoires. On March 11, 2015, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, ''Petitioners'') stated that they agree with the scope exclusion language proposed by Pier 1.[1]

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[2] highboys,[3] lowboys,[4] chests of drawers,[5] chests,[6] door chests,[7]

[1] *See* March 11, 2015 letter from Petitioners Re: Wooden Bedroom Furniture From The People's Republic of China/Petitioners' Response to Pier 1 Imports' Letter of February 13, 2015 (''Petitioners agree with the proposed amendment.'').

[2] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[3] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[4] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[5] A chest of drawers is typically a case containing drawers for storing clothing.

[6] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[7] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

chiffoniers,[8] hutches,[9] and armoires;[10] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate; [11] (9) jewelry armories; [12] (10) cheval mirrors; [13] (11) certain metal parts; [14] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds; [15] and (14) toy boxes.[16] Also excluded from the scope are certain enclosable wall bed units, also referred to as murphy beds, which are composed of the following three major sections: (1) A metal wall frame, which attaches to the wall and uses coils or pistons to support the metal mattress frame; (2) a metal frame, which has euro slats for supporting a mattress and two legs that pivot; and (3) wood panels, which attach to the metal wall frame and/or the metal mattress frame to form a cabinet to enclose the wall bed when not in use. Excluded enclosable wall bed units are imported in ready-to-assemble format with all parts necessary for assembly. Enclosable wall bed units do not include a mattress. Wood panels of enclosable wall bed units, when imported separately, remain subject to the order.

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the HTSUS as ''wooden . . . beds'' and under subheading 9403.50.9080 of the HTSUS as ''other . . . wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as ''parts of wood.'' Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, 9403.20.0018, or 9403.90.8041. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as ''glass mirrors . . . framed.'' The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Initiation of Changed Circumstances Review, and Consideration of Revocation of the Order in Part

Pursuant to section 751(b) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party [17] which shows changed circumstances sufficient to warrant a review of an order.[18] Based on the information provided by Pier 1, the Department has determined that there exist changed circumstances sufficient to warrant a changed circumstances review of the

[8] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[9] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[10] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[11] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[12] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning ''Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 31, 2004. *See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

[13] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[14] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

[15] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

[16] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (''ASTM'') standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,'' dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

[17] Pier 1stated in its March 16, 2015 entry of appearance that it is an importer of the jewelry armoires that are currently subject to this order, and as such is an interested party pursuant to 19 CFR 351.102(a)(29)(ii).

[18] *See* 19 CFR 351.216.

AD order on wooden bedroom furniture from the PRC.[19]

Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results. In its administrative practice, the Department has interpreted ''substantially all'' to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.[20] Petitioners state that they agree with the exclusion request, however, because Petitioners did not indicate whether they account for substantially all of the domestic production of wooden bedroom furniture, we are providing interested parties with the opportunity to address the issue of domestic industry support with respect to this proposed partial revocation of the order, and we are not combining this notice of initiation with a preliminary determination pursuant to 19 CFR 351.221(c)(3)(ii). As explained below, this notice of initiation will afford all interested parties an opportunity to address the proposed partial revocation.

Public Comment

Interested parties are invited to provide comments and/or factual information regarding this changed circumstances review, including comments concerning industry support. Comments and factual information may be submitted to the Department no later than 14 days after the date of publication of this notice. Rebuttal comments and rebuttal factual information may be filed with the Department no later than 10 days after the comments and/or factual information are filed.[21] All submissions must be filed electronically using Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS).[22] An electronically filed document must be received successfully in its entirety by ACCESS, by 5 p.m. Eastern Time on the due dates set forth in this notice.

The Department will issue the preliminary results of this changed circumstances review, in accordance with 19 CFR 351.221(c)(3), which will set forth the factual and legal conclusions upon which the preliminary results are based, and a description of any action proposed because of those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of the review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its AD changed circumstance review within 270 days after the date on which the review is initiated.

This initiation is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.221(b)(1).

Dated: March 26, 2015.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–07601 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 3510–DS–P

[19] *See* section 751(b) of the Act and 19 CFR 351.216(d).

[20] *See, e.g., Certain Cased Pencils From the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent To Revoke Order in Part,* 77 FR 42276 (July 18, 2012) (*Pencils*), unchanged in *Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order, in Part,* 77 FR 53176 (August 31, 2012).

[21] *See* 19 CFR 351.301(b)(2).

[22] *See,* generally, 19 CFR 351.303.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB157

Marine Mammals; File No. 14856

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Bruce R. Mate, Ph.D., Hatfield Marine Science Center, Oregon State University, Newport, OR 97365, has applied for an amendment to Scientific Research Permit No. 14856–02.

DATES: Written, telefaxed, or email comments must be received on or before May 4, 2015.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14856 Mod 6 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 14856–02 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 14856–02, first issued on December 18, 2013 (79 FR 3346), authorizes Dr. Mate to take 66 species of cetaceans and 12 species of pinnipeds in U.S. and international waters worldwide for scientific research. The purposes of the research are to: (1) Identify migration routes; (2) identify specific feeding and breeding grounds for each species; (3) characterize local movements and dive habits in both feeding and breeding grounds, and during migration; (4) examine the relationships between movements/dive habits and prey distribution, time of day, geographic location, or physical and biological oceanographic conditions; (5) characterize whale vocalizations; (6) characterize sound pressure levels to which whales are exposed; and (7) gather photo-identification and behavioral information for species and situations where little information has been documented. Researchers are authorized to conduct aerial and vessel surveys to perform a suite of research activities including: Observations, biopsy

sampling, implantable and suction-cup tagging, photo-identification, behavioral observation, passive acoustic recording, post-tag monitoring, and/or import, receive or export parts. The permit expires December 31, 2018. Dr. Mate is requesting the permit be amended to increase the number of humpback whales (*Megaptera novaeangliae*) that may be taken by Level B harassment during surveys from 1,000 to 2,000 animals annually to account for all approaches within 100 yards. No other changes to the permit or manner of research would occur.

A draft supplemental environmental assessment (SEA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft SEA is available for review and comment simultaneous with the scientific research permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 27, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–07493 Filed 4–1–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838]

Seamless Refined Copper Pipe and Tube From Mexico: Rescission, in Part, of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 2, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Dennis McClure, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–5973, respectively.

Background

On November 3, 2014, the Department of Commerce (Department) published a notice of opportunity to request an administrative review of the antidumping duty order on seamless refined copper pipe and tube from Mexico covering the period November 1, 2013, through October 31, 2014.[1] The Department received a timely request for an antidumping duty administrative review from the petitioners (*i.e.,* Cerro Flow Products, LLC; Wieland Copper Products, LLC; Mueller Copper Tube Products, Inc.; and Mueller Copper Tube Company, Inc.) for the following companies: (1) GD Affiliates S. de R.L. de C.V. (Golden Dragon); (2) IUSA, S.A. de C.V. (IUSA); and (3) Nacional de Cobre, S.A. de C.V. (Nacobre). The Department also received timely requests for an antidumping duty administrative review from Golden Dragon, IUSA, and Nacobre. On December 23, 2013, the Department published a notice of initiation of administrative review with respect to these companies.[2]

On January 27, 2015, March 17, 2015, and March 19, 2015, IUSA, Golden Dragon, and Nacobre, respectively, withdrew their requests for an administrative review. On March 23, 2015, the petitioners withdrew their request for an administrative review for IUSA and Nacobre. All of these submissions were timely, pursuant to 19 CFR 351.213(d)(1).

Rescission, In Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. In this case, all requests were submitted within the 90-day period and, thus, are timely. Because these withdrawals of requests for an antidumping duty administrative review are timely, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to IUSA and Nacobre. However, we are continuing the administrative review with respect to Golden Dragon because the petitioners have requested a review of this company, and we did not receive a timely withdrawal of review request from the petitioners with respect to it.

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 to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 27, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–07598 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Erik Antonio Perez-Bazan, Inmate Number—45654–379, FCI Bastrop, Federal Correctional Institution, P.O. Box 1010, Bastrop, Texas 78602, Washington, DC 20230

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 79 FR 65176 (November 3, 2014).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 76956 (December 23, 2014).

On September 15, 2014, in the U.S. District Court, Southern District of Texas, Erik Antonio Perez-Bazan (''Perez-Bazan''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Perez-Bazan intentionally and knowingly conspired to knowingly and willfully export, attempt to export, and cause to be exported from the United States to Mexico eight (8) M203 grenade launcher barrels, which were designated as defense articles on the United States Munitions List, without first obtaining the required license or written authorization from the State Department. Perez-Bazan was sentenced to 75 months of imprisonment, three years of supervised released, and fined a $100 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Perez-Bazan's conviction for violating the AECA, and has provided notice and an opportunity for Perez-Bazan to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Perez-Bazan.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Perez-Bazan's export privileges under the Regulations for a period of 10 years from the date of Perez-Bazan's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Perez-Bazan had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until September 15, 2024, Erik Antonio Perez-Bazan, with a last known address of Inmate Number—45654–379, FCI Bastrop, Federal Correctional Institution, P.O. Box 1010, Bastrop, Texas 78602, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Perez-Bazan by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Perez-Bazan may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Perez-Bazan. This Order shall be published in the **Federal Register.**

Sixth, this Order is effective immediately and shall remain in effect until September 15, 2024.

Issued this 26th day of March, 2015.

Thomas Andrukonis,

Acting Director, Office of Exporter Services.

[FR Doc. 2015–07642 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Ronald Alexander Dobek, a/k/a Alexander M. Rovegno, Inmate Number—28521–057, FCI Duluth, Federal Prison Camp, P.O. Box 1000, Duluth, MN 55814.

On September 10, 2014, in the U.S. District Court, Eastern District of Wisconsin, Ronald Alexander Dobek (''Dobek''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Dobek conspired and knowingly and willfully attempted to export, exported, and caused to be exported F–16 canopy seals, which were designated as defense articles on the United States Munitions List, from the United States to Venezuela without having first obtained from the Department of State a license for such export or written authorization for such export. Dobek was sentenced 84 months of imprisonment, three years of supervised release and fined a $300 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Dobek's conviction for violating the AECA, and have provided notice and an opportunity for Dobek to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has received and reviewed a submission from Dobek.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Dobek's export privileges under the Regulations for a period of 10 years from the date of Dobek's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Dobek had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until September 10, 2024, Ronald Alexander Dobek, a/k/a Alexander M. Rovegno, with a last known address of Inmate Number—28521–057, FCI Duluth, Federal Prison Camp, P. O. Box 1000, Duluth, MN 55814, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Dobek by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Dobek may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Dobek. This Order shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until September 10, 2024.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

Issued this 26th day of March, 2015.

Thomas Andrukonis,

Acting Director, Office of Exporter Services.

[FR Doc. 2015–07643 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice and opportunity for public comment.

SUPPLEMENTARY INFORMATION: Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[3/24/2015 through 3/27/2015]

Firm name	Firm address	Date accepted for investigation	Product(s)
Atlas Stamping and Manufacturing Corporation.	729 North Mountain Road, Newington, CT 06111.	3/24/2015	The firm manufactures precision metal stamped seals, gaskets, washers, and brackets.
Drill Masters-Eldorado Tools, Inc	336 Boston Post Road, Milford, CT 06460.	3/25/2015	The firm manufactures deep hole gun drilling tools, fixtures and accessories.
West Michigan Spring and Wire Forming, Inc. d/b/a West Michigan Tube and Wire Forming.	2724 Ninth Street, Muskegon, MI 49444	3/25/2015	The firm manufactures seating and framing components of bent tubular steel and wire formed assemblies.
Graham Machine, Inc	1581 Pittsburgh Road, Franklin, PA 16323.	3/25/2015	The firm manufactures mining and safety equipment such as bushings, shafts, bearing housings and beam anchor components.
Slim Line Case Company	36 St. Paul Street, Suite 321, Rochester NY 14604.	3/26/2015	The firm manufactures handcrafted leather ID cases and key cases and other personal leather goods.
CMG Process, Inc. d/b/a APEX Engineered Products.	2659 Lake Road, Clark, PA 16113	3/26/2015	The firm manufactures and designs process equipment such as shell and tube heat exchangers.
Custom Powder Systems, LLC	2715 North Airport Commerce, Springfield, MO 65803.	3/26/2015	The firm manufactures metal containment systems including bins systems, cleaning systems, and lift systems.

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: March 27, 2015.

Michael S. DeVillo,

Eligibility Examiner.

[FR Doc. 2015–07570 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Brian Keith Bishop, 93000 Pretoria Place, Dulles, VA 20189–9300.

On May 7, 2013, in the U.S. District Court, Eastern District of Virginia, Brian Keith Bishop (''Bishop''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Bishop knowingly and willfully attempted to export from the United States to Jordan approximately 7,496 rounds of 9mm and 7.62 x 39mm ammunition, which were designated as defense articles on the United States Munitions List, without first obtaining the required license or written authorization from the State Department. Bishop was sentenced to probation for a term of two years; six months home confinement; criminal fine of $25,000 and fined a $100 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR,

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Bishop's conviction for violating the AECA, and has provided notice and an opportunity for Bishop to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Bishop.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Bishop's export privileges under the Regulations for a period of five years from the date of Bishop's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Bishop had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until May 7, 2018, Brian Keith Bishop, with a last known address of 93000 Pretoria Place, Dulles, VA 20189–9300, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Bishop by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Bishop may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Bishop. This Order shall be published in the **Federal Register.**

Sixth, this Order is effective immediately and shall remain in effect until May 7, 2018.

Issued this 26th day of March, 2015.

Thomas Andrukonis,

Acting Director, Office of Exporter Services.

[FR Doc. 2015–07638 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Order Temporarily Denying Export Privileges; X–TREME Motors LLC, et al.

In the Matter of: X–TREME Motors LLC, a/k/a XTREME Motors, 2496 South 1900 West, West Haven, Utah 84401; and XTREME Outdoor Store, a/k/a XTREME Outdoors, 2496 South 1900 West, West Haven, Utah 84401; and Tyson Preece, 3930 West Old Highway Road, Morgan, Utah 84050; and Corey Justin Preece, a/k/a Corey Preece, a/k/a Justin Preece, 1245 South Morgan Valley Drive, Morgan, Utah 84050; and Toby Green, 480 West 175 North, Morgan, Utah 84050.

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2014) (''EAR'' or the ''Regulations''),[1] I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the September 30, 2014 Order Temporarily Denying the Export Privileges of X–TREME Motors LLC, also known as XTREME Motors; XTREME Outdoor Store, also known as XTREME Outdoors; Tyson Preece; Corey Justin Preece, also known as Corey Preece or Justin Preece; and Toby Green I find that renewal of the Temporary Denial Order (''TDO'') is necessary in the public interest to prevent an imminent violation of the EAR.

[1] The EAR are currently codified at 15 CFR parts 730–774 (2014). The EAR issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (Aug. 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (2006 & Supp. IV 2010).

I. Procedural History and Background

On September 30, 2014, I signed a TDO denying for 180 days the export privileges of X–TREME Motors LLC and XTREME Outdoor Store (collectively, ''X–TREME''). Tyson Preece, Corey Justin Preece, and Toby Green were added to the TDO as related persons in accordance with Section 766.23 of the Regulations. The TDO was issued *ex parte* pursuant to Section 766.24(a), and went into effect upon issuance on September 30, 2014. Copies of the TDO were sent to each party named in the September 30, 2014 order in accordance with Sections 766.5 and 766.24(d) of the Regulations, and on October 7, 2014, the TDO was published in the **Federal Register**. 79 FR 60,445 (Oct. 7, 2014).

In support of the original TDO, OEE presented evidence that X–TREME repeatedly exported items controlled for Crime Control reasons without the required licenses to various destinations, including Russia and China. In order to conceal the actual contents of the shipments the Respondents intentionally mislabeled the contents on U.S. Customs Declarations. Between September 1, 2014, and the issuance of the TDO on September 30, 2014, the United States Government detained approximately 20 shipments containing rifle scopes to destinations that required an export license.

The current TDO dated September 30, 2014, will expire on March 28, 2015, unless renewed on or before that date. On March 5, 2015, OEE submitted a written request for renewal of the TDO as to each named party. Notice of the renewal request was provided in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to any aspect of the requested renewal has been received.[2]

II. TDO Renewal

A. Legal Standard

Pursuant to Section 766.24(b) of the Regulations, BIS may issue or renew an order temporarily denying a Respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that ''the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the TDO and the evidence developed over the course of this investigation, including the evidence summarized in Section I., *supra.* OEE's on-going investigation of X–TREME, in conjunction with the United States Attorney's Office for the District of Utah, included the execution of a search warrant at X–TREME's place of business on September 29, 2014. Based on evidence obtained via the search warrant and since reviewed, OEE has determined that X–TREME's unlawful export activities were more extensive than known at the time the TDO issued, including that X–TREME engaged in at least 44 unlicensed exports over a 30-day period prior to the issuance of the TDO. In addition to the unlicensed export of rifle scopes discussed above, OEE also identified unlicensed exports of stun guns and Oleoresin Capsicum spray, items also controlled for Crime Control reasons.

Moreover, despite the execution of the search warrant and the issuance of the TDO the following day, X–TREME continued to engage in unlawful export activities. On October 21, 2014 and October 28, 2014, respectively, X–TREME exported or attempted to export items subject to the Regulations to Canada. While the October 28, 2014 shipment was stopped by the United States Postal Service, X–TREME was successful in exporting the October 21, 2014 shipment. Both of these transactions plainly violated the TDO, which prohibits X–TREME from engaging in any export-related activities involving items subject to the EAR.

C. Findings

I find that the evidence presented by OEE demonstrates that renewal of the TDO is necessary to avoid an imminent violation of the Regulations based upon X–TREME's deliberate and covert violations both pre- and post-issuance of the TDO. Accordingly, renewal of the TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export and re-export transactions involving items subject to the EAR or other activities prohibited by the TDO. Doing so is consistent with the public interest to preclude future violations of the EAR.

It is therefore ordered:

First, that X–TREME MOTORS LLC, a/k/a XTREME MOTORS, 2496 South 1900 West, West Haven, Utah 84401; XTREME OUTDOOR STORE, a/k/a XTREME OUTDOORS, 2496 South 1900 West, West Haven, Utah 84401; TYSON PREECE, 3930 West Old Highway Road, Morgan, Utah 84050; COREY JUSTIN PREECE, a/k/a COREY PREECE, a/k/a JUSTIN PREECE, 1245 South Morgan Valley Drive, Morgan, Utah 84050; and TOBY GREEN, 480 West 175 North, Morgan, Utah 84050; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

[2] Neither Tyson Preece, Corey Justin Preece, nor Toby Green has at any time challenged his respective inclusion as a related person to X–TREME.

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

In accordance with the provisions of Section 766.24(e) of the EAR, X–TREME Motors LLC and/or XTREME Outdoor Store may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. In accordance with the provisions of Sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Tyson Preece, Corey Justin Preece and/or Toby Green may, at any time, appeal their inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose such a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Dated: March 27, 2015.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2015–07569 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Marine Debris Program Performance Progress Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 1, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Tom Barry at (301) 713–4248 x161 or *tom.barry@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

The NOAA Marine Debris Program (MDP) supports national and international efforts to research, prevent, and reduce the impacts of marine debris. The MDP is a centralized office within NOAA that coordinates and supports activities, both within the bureau and with other federal agencies, that address marine debris and its impacts. In addition to inter-agency coordination, the MDP uses partnerships with state and local agencies, tribes, non-governmental organizations, academia, and industry to investigate and solve the problems that stem from marine debris through research, prevention, and reduction activities, in order to protect and conserve our nation's marine environment and ensure navigation safety.

The Marine Debris Research, Prevention, and Reduction Act (33 U.S.C. 1951 *et seq.*) as amended by the Marine Debris Act Amendments of 2012 (Pub. L. 112–213, Title VI, Sec. 603, 126 Stat. 1576, December 20, 2012) outlines three central program components for the MDP to undertake: (1) Mapping, identification, impact assessment, removal, and prevention; (2) reducing and preventing fishing gear loss; and (3) outreach to stakeholders and the general public. To address these components, the Marine Debris Act authorized the MDP to establish several competitive grant programs on marine debris research, prevention and removal that provide federal funding to non-federal applicants throughout the coastal United States and territories.

The terms and conditions of the financial assistance awarded through these grant programs require regular progress reporting and communication of project accomplishments to MDP. Progress reports contain information related to, among other things, the overall short and long-term goals of the project, project methods and monitoring techniques, actual accomplishments (such as tons of debris removed from an ecosystem, numbers of volunteers participating in a cleanup project, etc.), status of approved activities, challenges or potential roadblocks to future progress, and lessons learned. This information collection enables MDP to monitor and evaluate the activities supported by federal funds to ensure accountability to the public and to ensure that funds are used consistent with the purpose for which they were appropriated. It also ensures that reported information is standardized in such a way that allows for it to be meaningfully synthesized across a diverse set of projects and project types. MDP uses the information collected in a variety of ways to communicate with federal and non-federal partners and stakeholders on individual project and general program accomplishments.

The MDP operates within the Office of Response and Restoration as part of NOAA's National Ocean Service.

II. Method of Collection

Respondents to this collection may choose to submit electronically or in paper format.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Regular submission (new information collection).

Affected Public: Business or other for-profit organizations, not-for-profit institutions, state, local or tribal government.

Estimated Number of Respondents: 70.

Estimated Time per Response: 10 hours (semi-annually).

Estimated Total Annual Burden Hours: 1,400.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 30, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–07547 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 3510–JE–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Africa Partnership Forum (APF) Day; Notice of Meeting

AGENCY: United States Africa Command (USAFRICOM), DoD.

ACTION: Notice of meeting.

SUMMARY: The Headquarters, United States Africa Command (USAFRTCOM), plans to host an Africa Partnership Forum (APF) Day, June 8–12, 2015. For planning purposes, AFRICOM is gathering information on potential number or ''head count'' of business or commercial entities that may be interested in participating in the Africa Partnership Forum Day.

DATES: June 8–12, 2015.

ADDRESSES: Stage Palladium Theater, Plieninger Str. 102 70567 Stuttgart, Germany.

FOR FURTHER INFORMATION CONTACT: Interested parties may send their intent to participate to the following email addresses: (1) AFRICOM Stuttgart ACJ95 Mailbox, *africom.stuttgart.acj95.mbx.ppp-branch@mail.mil;* (2) *http://www.ncsi.com/africom/2015/index.php.* Please include your company name, point of contact information, the number of potential attendees, and indicate whether U.S. or non-U.S. business entity. State in the subject line: ''USAFRICOM Africa Partnership Forum (APF): June 8–12, 2015.''

Please respond to this notice no later than close-of-business on April 10, 2015. The three-day, USAFRICOM APF 8–12 will be held in Stuttgart, Germany. Specific detail s of the event, including a detailed schedule will be published at a later date.

SUPPLEMENTARY INFORMATION:

Monday, June 8, from 2 p.m. to 5 p.m., will focus on arrivals, registration, networking, and a 'No-Host' social.

Tuesday, June 9, from 8 a.m. to 5 p.m. and Wednesday, June 10, from 8 a.m. to 4 p.m., will consist of focused topic plenary presentations and facilitate discussions to obtain greater mutual situational understanding; develop new concepts, approaches, insights, and innovative solutions; and to capture opportunities for shared cooperative engagements.

Thursday, June 11, from 8 a.m. to 2 p.m., will focus on vendors' expositions showcasing/demonstrating available products and capabilities and networking to foster greater relationships with commercial industry, NGOs, academia, corporate social foundations, international/private and other organizational entities.

Friday, June 12 will focus on departure of attendees and compiling of comments and contributions of participants.

Dated: March 30, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–07575 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for the East Rockaway Inlet to Rockaway Inlet and Jamaica Bay Reformulation Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, New York District (Corps) with (New York State Department of Environmental Conservation as local sponsor) is preparing an Environmental Impact Statement (EIS) in accordance with Council on Environmental Quality's NEPA regulations; Corps' principles and guidelines as defined in Engineering Regulations (ER) 1105–2–100, Planning Guidance Notebook, and ER 200–2–2, Procedures for Implementing NEPA; and other applicable Federal and State environmental laws for the proposed Atlantic Coast of New York, East Rockaway Inlet to Rockaway Inlet and Jamaica Bay Coastal Storm Risk Management Feasibility Study. The study is re-assessing the feasibility of coastal storm risk management alternatives to be implemented within the congressionally authorized project area. This overall study area includes the entire Rockaway peninsula as well as the back-bay communities surrounding Jamaica Bay. During Hurricane Sandy, both Rockaway and Jamaica Bay communities were severely affected with large areas subjected to erosion, storm surge, and wave damage along the Atlantic Ocean shoreline and flooding of communities within and surrounding Jamaica Bay. Along the Rockaways, the Atlantic Ocean surge and waves exceeded the island height, resulting in flow of water across the peninsula, and contributing to the flooding along the shoreline of the interior of Jamaica Bay. Hurricane Sandy illustrated the need to re-evaluate the entire peninsula and back-bay area as a system, when considering risk-management measures. Acknowledging the amount of analyses required to comprehensively reevaluate the study area considering the influence of the Atlantic Ocean shorefront conditions on the back-bay system, a single Hurricane Sandy General Reevaluation Report and EIS (GRR/EIS) will be prepared. The Corps will use a tiered process to

facilitate project decision-making. The EIS will build upon the extensive Atlantic shoreline alternatives analysis and environmental and technical studies and outreach conducted to date. The proposed tiering approach will allow the study to focus on both broad overall Jamaica Bay-wide issues while simultaneously assessing site specific impacts, costs and mitigation measures for the shorefront and back-bay alternatives. The scope of analysis in the Tier 1 and Tier 2 will be appropriate to the level of detail necessary for those documents and will receive input from the public and reviewing agencies. The Tier 1 shoreline analysis will provide the basis for the alternatives to problems associated with erosion, storm surge, and wave damage along the Atlantic Ocean shoreline the relationship of the shoreline with the back-bay. The Tier 2 analysis will specifically address the flooding of communities within and surrounding Jamaica Bay.

ADDRESSES: Send written comments and suggestions concerning the scope of issues to be evaluated within the EIS to Robert Smith, Project Biologist/NEPA Coordinator, U.S. Army Corps of Engineers, New York District, Planning Division, Environmental, 26 Federal Plaza, New York, NY 10279–0090; Phone: (917) 790–8729; email: *robert.j.smith@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions about the overall East Rockaway Inlet to Rockaway Inlet and Jamaica Bay Coastal Storm Risk Management Reformulation Study should be directed to Daniel T. Falt, Project Manager, U.S. Army Corps of Engineers, New York District, Programs and Project Management Division, Civil Works Programs Branch, 26 Federal Plaza, Room 2127, New York, NY 10279–0090; Phone: (917) 790–8614; email: *daniel.t.falt@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Background

The U.S. Army Corps of Engineers, in partnership with the New York State Department of Environmental Conservation (NYSDEC), is undertaking this study. The original multiple purpose (coastal erosion control and coastal flooding protection) project for East Rockaway Inlet to Rockaway Inlet and Jamaica Bay, New York was authorized by the Flood Control Act of 1965 (Pub. L. 89–298). The authorized project provided for the restoration of a protective beach along 6.2 miles of Rockaway Beach, between Beach 19th Street and Beach 149th Street. The beach erosion control features of the authorized project on the Rockaway Peninsula consists of a 100-foot berm width (*i.e.,* beach) at an elevation of +10 foot NGVD (approximately 8.9 feet NAVD88) over the peninsula's entire project length.

The 1965 authorized project also included measures to provide hurricane damage risk reduction within Jamaica Bay by constructing a hurricane barrier and closure structure across the entrance to Jamaica Bay (Rockaway Inlet). This original project authority was modified by Section 72 of the Water Resources Development Act of 1974 to provide for the separate construction of the beach erosion control on the ocean-front of the Rockaway Peninsula independently from the hurricane barrier addressing Jamaica Bay. For more than 30 years, the ocean-front portion of the authorized project has been maintained; the hurricane barrier portion of the originally authorized project was never constructed and was subsequently de-authorized by the Water Resources Development Act of 1986.

In the early 2000s, the Corps began a reformulation effort to examine possible changes to the originally authorized East Rockaway Inlet to Rockaway Inlet and Jamaica Bay Project. The constructed shorefront features of the Atlantic Coastline (East Rockaway Inlet to Rockaway Inlet) were being reformulated with the goal of: Reducing coastal storm vulnerability to erosion, waves, and surge; identifying measures to reduce long-term re-nourishment costs; and extending federal participation in the project for up to 50 years. The reformulation effort was exclusively examining shorefront features as stand-alone alternatives for addressing shorefront damages. The Corps developed shorefront alternatives with the NYSDEC and the resource agency and public coordination of the shorefront alternatives was ongoing prior to Hurricane Sandy. The reformulation for the Jamaica Bay portion of the study area (*i.e.,* the back-bay communities) had not been advanced prior to Hurricane Sandy due to funding constraints.

In October 2012, Hurricane Sandy made landfall with a combination of massive storm surge, rising water levels and reshaping of local geography. In response to the damages and vulnerability of communities and ecosystems along the Atlantic Coast, the U.S. Congress passed the Disaster Relief Appropriations Act of 2013 (Pub. L. 113–2). In part, directing the Corps of Engineers to ''*. . . reduce future flood risk in ways that will support the long-term sustainability of the coastal ecosystem and communities and reduce the economic costs and risks associated with large-scale flood and storm events in areas along the Atlantic Coast within the boundaries of the North Atlantic Division of the Corps that were affected by Hurricane Sandy.*'' In partial fulfillment of the requirements detailed within the Act, the USACE identified authorized USACE projects for reducing flooding and storm risks that have been constructed or are under construction that could be re-evaluated under the new guidelines; the existing East Rockaway Inlet to Rockaway Inlet and Jamaica Bay, NY project met the criteria for re-evaluation.

Because the reformulation for the Jamaica Bay portion of the study area had not been advanced prior to Hurricane Sandy, the Corps accelerated the reformulation effort for the back-bay portion of the study. The Corps is currently integrating the advanced plan formulation effort for the shorefront with the relatively recent planning effort for the back-bay into a single comprehensive document to address the entire system. Acknowledging the amount of analyses required to comprehensively reevaluate the study area considering the influence of the Atlantic Ocean shorefront conditions on the back-bay system, a single Hurricane Sandy General Reevaluation Report and EIS (GRR/EIS) will be prepared. The Corps will use a tiered process to facilitate project decision-making. The EIS will build upon the extensive Atlantic shoreline alternatives analysis and environmental and technical studies and outreach conducted to date. The proposed tiering approach will allow the study to focus on both broad overall Jamaica Bay-wide issues while simultaneously assessing site specific impacts, costs and mitigation measures for the shorefront and back-bay alternatives. The scope of analysis in the Tier 1 and Tier 2 will be appropriate to the level of detail necessary for those documents and will receive input from the public and reviewing agencies. The Tier 1 shoreline analysis will provide the basis for the alternatives to problems associated with erosion, storm surge, and wave damage along the Atlantic Ocean shoreline and the Tier 2 analysis will address the flooding of communities within and surrounding Jamaica Bay.

2. Study Area

The study area encompasses the Atlantic Coast of New York City between East Rockaway Inlet and Rockaway Inlet, and the water and lands within and surrounding Jamaica Bay, New York. The southern extent of the study area is the Atlantic Ocean and

shorefront along the Rockaway Peninsula which separates the Atlantic Ocean from Jamaica Bay immediately to the north.

3. USACE Decision Making

Developing the alternatives formulation, engineering design and environmental consequences assessment into a single GRR/EIS allows the New York District to comprehensively evaluate the project as a system. However, the USACE acknowledges that the shorefront and back-bay segments may not concurrently be ready for a recommendation. The shorefront portion of the project has undergone extensive alternatives analysis, while the back-bay re-evaluation process is in its earlier stages. Additionally, the shorefront measures being evaluated have been the subject of considerable public and agency coordination while these essential coordination efforts have not been completed for the back-bay alternatives.

As a result, the Corps will develop the HSGRR/EIS evaluating the entire area, but will tier the decisions (*i.e.,* issue separate records of decision) on the respective areas. This decision making approach will allow time to address agency policy issues and build consensus among cooperating agencies and the public. This option to issue multiple records of decision based on a single EIS is available to the USACE because of the flexibility in the NEPA process as described in the President's Council on Environmental Quality's (CEQ) NEPA-Implementing Regulations.

4. Public Participation

The USACE invites public comment on the scope of the issues and alternatives to be addressed in the draft EIS. Input will be received through public meetings with both oral and written comments being provided; written comments may be submitted at any time during the process. The New York District will host a series of three public scoping meetings to receive comments on the proposed scope of issues to be evaluated in the draft environmental impact statement. Each of the public meetings will begin with an informal open house from 5:00 p.m. to 6:00 p.m. followed by the formal meeting from 7:00–9:00 p.m.

Two public meetings have been scheduled with a third TBD. The first will be held at the Knights of Columbus (333 Beach 90th Street, Rockaway Beach, NY 11693) on April 22, 2015 between 6:30–9:30 p.m. The second is scheduled at the Ryan Visitor Center (50 Aviator Road Brooklyn, NY 11234) for Wednesday, April 29 from 6:00–8:00 p.m.

5. Lead and Cooperating Agencies

The U.S. Army Corps of Engineers is the lead federal agency for the preparation of the environmental impact statement (EIS) and meeting the requirements of the National Environmental Policy Act and the NEPA Implementing Regulations of the President's Council on Environmental Quality (40 CFR parts 1500–1508). Within the study area, the National Park Service (NPS) manages the over 19,000-acre Jamaica Bay Unit of the Gateway National Recreation Area. Many of the actions evaluated within the EIS could occur within the National Recreation Area. Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to Colonel Paul E. Owen, District Engineer (see **ADDRESSES**). The preparation of the EIS will be coordinated with New York State and New York City agencies with discretionary authority relative to the proposed actions. The Draft EIS is currently scheduled for distribution to the public November 2015.

Dated: March 26, 2015.

Peter M. Weppler,

Chief, Environmental Analysis Branch, Planning Division.

[FR Doc. 2015–07580 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 3720–58–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board; Notice of Federal Advisory Committee Meeting

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness, Defense Language and National Security Education Office (DLNSEO), DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal advisory committee meeting of the National Security Education Board will take place. This meeting is open to the public.

DATES: Tuesday, May 5, 2015, from 8:30 a.m. to 4:00 p.m.

ADDRESSES: 1101 Wilson Boulevard, Suite 1210, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Alison Patz, telephone: (571) 256–0771, *Alison.m.patz.civ@mail.mil,* fax: (703) 692–2615.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

Agenda:

8:30 a.m.—Opening Remarks and Key Updates.
9:15 a.m.—Programmatic Updates.
10:00 a.m.—Class of 2015 Boren Scholars and Fellows.
10:45 a.m.—Break.
11:00 a.m.—Strategic National Security Hiring Needs.
11:30 a.m.—Read Out From NSEB Working Group on Communications.
12:15 p.m.—Working Lunch.
1:00 p.m.—Full Board Discussion on NSEP Strategic Communications and Branding.
2:30 p.m.—Break.
2:45 p.m.—New NSEP Initiatives.
3:15 p.m.—Board Discussion.
4:00 p.m.—Adjourn.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Point of Contact: Alison Patz, Alternate Designated Federal Official, (571) 256–0771, *Alison.m.patz.civ@mail.mil.*

Pursuant to 41 CFR 102–3.140 and sections 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense National Security Education Board about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of the planned meeting.

All written statements shall be submitted to the Designated Federal Official for the National Security Education Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Official can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

Statements being submitted in response to the agenda mentioned in

this notice must be received by the Designated Federal Official at the address listed in **FOR FURTHER INFORMATION CONTACT** at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the National Security Education Board until its next meeting.

The Designated Federal Official will review all timely submissions with the National Security Education Board and ensure they are provided to all members of the National Security Education Board before the meeting that is the subject of this notice.

Dated: March 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–07516 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Supplemental Record of Decision for Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

AGENCY: Department of the Navy, DoD.

ACTION: Notice of supplemental decision and availability.

SUMMARY: The Department of the Navy (DoN) reaffirms its August 15, 2012, Record of Decision to employ up to four Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar systems with certain geographical restrictions and mitigation monitoring designed to reduce potential adverse effects on the marine environment, including operating LFA sonar systems in the waters in which the Hawaiian Islands Stock Complex of common bottlenose dolphins could occur. The August 15, 2012, Record of Decision implemented the preferred alternative, Alternative 2, identified in the 2012 Final Supplemental Environmental Impact Statement (FSEIS)/Supplemental Overseas Environmental Impact Statement (SOEIS) for SURTASS LFA sonar.

Following litigation challenging the adequacy of the 2012 FSEIS/FSOEIS, the District Court for the Northern District of California determined that the DoN failed to use the best available data when it determined potential impacts from the employment of SURTASS LFA sonar systems on one stock of common bottlenose dolphins in Hawaiian waters rather than the more current information that shows five stocks of common bottlenose dolphins in Hawaiian waters. Accordingly, DoN prepared a narrowly-tailored FSEIS/SOEIS to remedy this deficiency. The National Marine Fisheries Service was a cooperating agency in accordance with 40 CFR 1501.6 for the development of the narrowly-tailored FSEIS/FSOEIS.

SUPPLEMENTARY INFORMATION: The full text of the Record of Decision (ROD) is available for public viewing and download at *http://www.surtass-lfa-eis.com.* Single copies of the ROD are available upon request from SURTASS LFA Sonar SEIS/SOEIS Program Manager, 4350 Fairfax Drive, Suite 600, Arlington, VA 22203, or email: *eisteam@surtass-lfa-com.*

Dated: March 26, 2015.

P.A. Richelmi,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2015–07549 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Amendment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Amendment of Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is amending the charter for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being amended pursuant to 10 U.S.C. 1114(a)(1) and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a), established the Board. The Board is a statutory Federal advisory committee that provides independent advice and recommendations related to the actuarial matters associated with the Department of Defense (DoD) Medicare-Eligible Retiree Health Care Fund (''the Fund'') and other related matters. The Board, pursuant to 10 U.S.C. 1114(b) and (c), shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary of Defense.

The Board shall review valuations of the Fund under 10 U.S.C. 1115(c) and shall report periodically, not less than once every four years, to the President and the Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

The Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), may act upon the Board's advice and recommendations.

The Board consists of three members appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries. Board members will serve for a term of 15 years, except that a Board member appointed to fill a vacancy occurring before the end of the term for which the predecessor was appointed shall serve only until the end of such term. A Board member may serve after the end of the term until a successor has taken the oath of office. The Board membership appointments are staggered so that a new member is appointed every five years. A Board member may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board and for no other reason. The Board's Chair will be designated by the USD(P&R) from among those Board members previously approved by the Secretary of Defense.

Board members, who are not full-time or permanent part-time Federal officers or employees, will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members and is entitled, pursuant to 10 U.S.C. 1114(a)(3), to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board. Board members who are full-time or permanent part-time Federal officers or employees shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. All members are entitled to reimbursement for official Board-related travel and per diem.

The DoD has determined that subcommittees will not be authorized for this Board. The Board's Designated Federal Officer (DFO) must be a full-time or permanent part-time DoD

employee, designated in accordance with established DoD policies and procedures.

The Board's DFO is required to attend at all meetings of the Board for the entire duration of each and every meeting. However, in the absence of the Board's DFO, a properly approved Alternate DFO, duly appointed to the Board according to established DoD policies and procedures, must attend the entire duration of all meetings of the Board.

The DFO, or the Alternate DFO, calls all meetings of the Board; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries.

All written statements shall be submitted to the DFO for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: March 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–07508 Filed 4–1–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 15–06]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 15–06 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: March 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 19 2015

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-06, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to The Netherlands for defense articles and services estimated to cost $1.05 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

James Worm
Principal Director Business Operations

for J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 15–06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Netherlands

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$.900 billion
Other	$.150 billion
TOTAL	$1.050 billion

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 17 CH–47F Cargo Helicopters with customer unique post-modifications, 46 T55–GA–714A Aircraft Turbine Engines with Hydro-Mechanical Assembly (34 installed and 12 spares), 41 Embedded Global Positioning System/Inertial Navigation Systems (EGIs), 54 AN/ARC–231 Ultra High Frequency/Very High Frequency Radios, 21 AN/ARC–220 High Frequency Radios, 21 AN/APX–123A Identification Friend or Foe Transponders, and 41 AN/ARC–201D Very High Frequency Radios. Also included are spare and repair parts, support equipment, tools and test equipment, aircraft ferry and refueling support, personnel training and training equipment, publications and technical documentation, U.S. government and contractor technical, and logistics support services, and other related elements of logistics and program support.

(iv) *Military Department:* Army (WGO)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 19 Mar 15

Policy Justification

Netherlands—CH–47F–Aircraft

The Government of Netherlands has requested a possible sale of 17 CH–47F Cargo Helicopters with customer unique post-modifications, 46 T55–GA–714A Aircraft Turbine Engines with Hydro-Mechanical Assembly (34 installed and 12 spares), 41 Embedded Global Positioning System/Inertial Navigation Systems (EGIs), 54 AN/ARC–231 Ultra High Frequency/Very High Frequency Radios, 21 AN/ARC–220 High Frequency Radios, 21 AN/APX–123A Identification Friend or Foe Transponders, and 41 AN/ARC–201D Very High Frequency Radios. Also included are spare and repair parts, support equipment, tools and test equipment, aircraft ferry and refueling support, personnel training and training equipment, publications and technical documentation, U.S. government and contractor technical, and logistics support services, and other related elements of logistics and program support. The estimated cost is $1.05 billion.

The Netherlands is one of the major political and economic powers in Europe and NATO and an ally of the United States in the pursuit of peace and stability. It is vital to U.S. national interests to assist the Netherlands to

develop and maintain a strong and ready self-defense capability.

The proposed sale of CH–47F aircraft will improve the Netherlands' capability to meet current and future requirements for troop movement, medical evacuation, aircraft recovery, parachute drop, search and rescue, disaster relief, fire-fighting, and heavy construction support. The Netherlands will use the enhanced capability to strengthen its homeland defense, deter regional threats, and provide direct support to coalition and security cooperation efforts. The CH–47F aircraft will supplement and eventually replace the Royal Netherlands Air Force's aging fleet of CH–47 helicopters. The Netherlands will have no difficulty absorbing this aircraft into its armed forces.

The proposed sale of these helicopters and support will not alter the basic military balance in the region.

The principal contractor will be the Boeing Helicopter Company in Philadelphia, Pennsylvania. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. government or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness or acquisition timelines as a result of this proposed sale.

Transmittal No. 15–06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The CH–47F is a heavy lift, newly manufactured aircraft. The CH–47F has the Common Avionics Architecture System (CAAS) cockpit, which provides aircraft system, flight, mission, and communication management systems to the flight crew. The CAAS consist of two dual-redundant MIL–STD–1553B data busses and an Ethernet LAN capable of supporting both IEEE 802.3 and ARINC 664. The CAAS includes five multifunction displays (MFDs), two general purpose processor units (GPPUs), two control display units (CDUs) and two data concentrator units (DCUs). The Navigation System will have two Embedded Global Positioning System (GPS)/Inertial Navigation System (INS) (EGIs), two Digital Advanced Flight Control System (DAFCS), one ARN–149 Automatic Direction Finder, one ARN–147 (VOR/ILS marker Beacon System), one ARN–153 Tactical Airborne Navigation System (TACAN), and two air data computers, one Radar Altimeter systems. The communications suite consists of two AN/ARC–231 Multi-mode radios providing Very High Frequency (VHF) FM, VHF–AM, Ultra High Frequency, Have Quick II and Data Management Satellite Communications, and two AN/ARC–201D Single Channel Ground and Airborne Radio Systems (SINCGARS) with associated Internet Download Manager. The APX–123 Identification Friend or Foe (IFF) will provide the additional functionality of dual IFF Mode 4/5. The AN/APX–123 Transponder will be classified Secret if Mode 4, or Mode 5 cryptographic key is loaded in the equipment.

2. Identification and security classification of classified equipment, major components, subsystems, software, and technical data (performance, maintenance, operational (R&M, etc), documentation, training devices, and services are classified up to Secret.

3. The Embedded GPS/INS (EGI) unit provides GPS and INS capabilities to the aircraft. The EGI will include Selective Availability anti-Spoofing Module (SAASM) security modules to be used for secure GPS PPS.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of the Netherlands.

[FR Doc. 2015–07515 Filed 4–1–15; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of Public Meeting and Hearing.

SUMMARY: Pursuant to the provisions of the Government in the Sunshine Act, notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public meeting and hearing described below. The Board invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

DATES: Session I: 12:00 p.m.–1:00 p.m., Session II: 1:00 p.m.–4:00 p.m., Session III: 5:30 p.m.–7:30 p.m., Session IV: 7:30 p.m.–9:00 p.m.; April 29, 2015.

ADDRESSES: Walter Gerrells Performing Arts and Exhibition Center, 4012 National Parks Highway, Carlsbad, New Mexico 88220.

STATUS: Open. The Board has determined that an open meeting furthers the public interest underlying both the Government in the Sunshine Act and the Board's enabling legislation. The proceeding is being noticed as both a meeting under the Government in the Sunshine Act and a hearing under the Board's enabling legislation. At the conclusion of Session IV, the Board is expected to deliberate and then vote on a staff proposal. Deliberations and voting will proceed in accordance with the Board's operating procedures concerning the conduct of meetings.

MATTERS TO BE CONSIDERED: In Session I of this public meeting and hearing, the Board will receive testimony from a senior Department of Energy (DOE) official regarding actions taken by DOE to safely recover the Waste Isolation Pilot Plant (WIPP) underground from events following a salt haul truck fire on February 5, 2014, and a separate radiological release on February 14, 2014. Testimony is also expected to focus on the progress of implementation of corrective actions to resume safe waste operations. Directly following Session I, the Board's staff will present testimony to the Board concerning actions taken by the Board before and after the two accidents, and give an update of ongoing Board staff oversight activities. During Session II, the Board will receive testimony from a panel of senior managers from DOE Office of Environmental Management (EM), DOE Carlsbad Field Office (CBFO), and the site contractor—Nuclear Waste Partnership (NWP). The Board will first explore actions planned, and taken, by DOE to address the seven key elements in the WIPP recovery plan, and how compensatory measures implemented under safety management programs such as emergency preparedness and

response will protect workers and the public during recovery activities. The Board will also consider the issue of how DOE will manage external pressure to resume waste operations without compromising the safety attributes of the plan's key elements. The Board will then examine DOE's safety basis strategy for WIPP recovery operations and upgrades, including the criteria for determining whether upgrades need to be planned and executed as major modifications. This will include actions being taken by DOE and the site contractor to ensure that hazards during the recovery phases are properly analyzed in Evaluations of the Safety of the Situation, and controls are properly identified and implemented. The final topic in Session II concerns DOE's strategy for providing adequate federal oversight during the recovery phase. In Session III, the Board will again receive testimony from a panel comprised of senior managers from DOE EM, CBFO, NWP, and the WIPP Accident Investigation Board Chairman. The Board will receive testimony on actions to correct deficiencies in key safety management programs such as emergency management, maintenance and engineering, fire protection, and nuclear safety. The Board will end Session III with a discussion of DOE's strategy for improving the effectiveness of federal oversight of contractor activities, including specific actions to ensure that improvements made by the site contractor and DOE are sustained over the long term. In Session IV, the Board will conclude the proceeding with testimony from its senior staff regarding an update to the public on the Board's proposed oversight actions associated with safe recovery of the underground, and oversight of corrective actions to resume and sustain safe waste operations. The Board is then expected to conduct deliberations concerning the staff's proposed oversight plan. The meeting will conclude with the Board's vote on the staff's recommendation.

FOR FURTHER INFORMATION CONTACT: Mark Welch, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Public participation in the hearing is invited. The Board is setting aside time at the end of Sessions II and III for presentations and comments from the public. The public will be given one final opportunity for comment before the Board begins deliberations in Session IV. Requests to speak may be submitted in writing or by telephone. The Board asks that commenters describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on April 24, 2015, will be scheduled to speak at the session of the hearing most relevant to their presentations. At the beginning of the hearing, the Board will post a schedule for speakers at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the hearing or may be sent to the Board's Washington, DC office. The Board will hold the record open until May 25, 2015, for the receipt of additional materials. The hearing will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*www.dnfsb.gov*). A transcript of the hearing, along with a DVD video recording, will be made available by the Board for inspection and viewing by the public at the Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: March 30, 2015.

Jessie H. Roberson,

Vice Chairman.

[FR Doc. 2015–07648 Filed 3–31–15; 11:15 am]

BILLING CODE CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2015–ICCD–0038]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Historically Black Colleges and Universities (HBCU) Program and Student Aid and Fiscal Responsibility Act (SAFRA) of 2009 Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before May 4, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0038 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E10, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, 3, please contact Wendy Lawrence, 202–219–7097.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the

information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Historically Black Colleges and Universities (HBCU) Program and Student Aid and Fiscal Responsibility Act (SAFRA) of 2009 Program.

OMB Control Number: 1840–0113.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Private Sector, State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 97.

Total Estimated Number of Annual Burden Hours: 2,328.

Abstract: The Historically Black Colleges and Universities (HBCU) Program and the Student Aid and Fiscal Responsibility Act (SAFRA) of 2009 are authorized by Title III, Part B and Part F. The purpose of these programs is to provide historically Black institutions with resources to establish or strengthen their physical plants, financial management, academic resources, and endowments.

Dated: March 30, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–07550 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–246]

El Dorado Irrigation District; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application for Temporary Variance of Minimum Flow Requirements.

b. *Project No.:* 184–246.

c. *Date Filed:* March 25, 2015.

d. *Applicant:* El Dorado Irrigation District (licensee).

e. *Name of Project:* El Dorado Project.

f. *Location:* South Fork American River and its tributaries in Eldorado, Alpine, and Amador counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Brian Deason, Hydroelectric Compliance Analyst, (530) 642–4064, or *bdeason@eid.org*.

i. *FERC Contact:* John Aedo, (415) 369–3335, or *john.aedo@ferc.gov*.

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 15 days from the issuance date of this notice by the Commission (April 10, 2015). The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or 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,* (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. Please include the project number (P–184–246) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The licensee requests a temporary variance of the license-required minimum flow requirements at five locations in 2015 as a measure to respond to the current drought conditions in California. Specifically, the licensee requests Commission approval to:

- Reduce minimum streamflows at South Fork American River below Kyburz (gage A–12) from the required 60 cubic feet per second (cfs) to 45 cfs from May 16–31, from the required 60 cfs to 18 cfs in June, from the required 40 cfs to 15 cfs in July, and from the required 18 cfs to 15 cfs in August □
- Reduce minimum streamflows in Caples Creek below Caples Lake main dam (gage A–6) from the required 10 cfs to 5 cfs in April, from the required 14 cfs to 5 cfs from May 1–15, and from the required 14 cfs to 7 cfs from May 16–31 □
- Reduce minimum streamflows in Echo Creek below Echo Lake dam (gage A–3) from the required 6 cfs or natural flow to 2 cfs or natural flow in April and May □
- Reduce minimum streamflows in the Silver Fork American River below Silver Lake dam (gage A–8) from the required 4 cfs or natural flow to 2 cfs or natural flow in April and May□
- Reduce minimum streamflows in Pyramid Creek below Lake Aloha main dam (gage A–40) from the required 3 cfs to 2 cfs or natural flow in April, and from the required 5 cfs to 2 cfs or natural flow in May □

The licensee states that implementing the proposed minimum flow variances would preserve reservoir storage for project purposes, including meeting consumptive water needs and ensuring adequate streamflow and reservoir storage at the project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 1–866–208- 3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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 variance. 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 intervener 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: March 26, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–07538 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–670–000.

Applicants: Enable Gas Transmission, LLC.

Description: Section 4(d) rate filing per 154.403(d)(2): Fuel Tracker Filing Effective May 2015 to be effective 5/1/2015.

Filed Date: 3/23/15.

Accession Number: 20150323–5143.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: RP15–674–000.

Applicants: Golden Triangle Storage, Inc.

Description: Compliance filing per 154.203: Order No. 801 Compliance Filing to be effective 4/1/2015.

Filed Date: 3/24/15.

Accession Number: 20150324–5064.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: RP15–675–000.

Applicants: Guardian Pipeline, L.L.C.

Description: Section 4(d) rate filing per 154.204: PAL Negotiated Rate Agreement—Koch Energy Services L.L.C. to be effective 3/26/2015.

Filed Date: 3/24/15.

Accession Number: 20150324–5181.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: RP15–676–000.

Applicants: Enable Mississippi River Transmission, L.

Description: Section 4(d) rate filing per 154.204: Negotiated Rate Filing to Add Ameren 3668 Effective 4–1–15 to be effective 4/1/2015.

Filed Date: 3/24/15.

Accession Number: 20150324–5191.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: RP15–677–000.

Applicants: North Baja Pipeline, LLC.

Description: Compliance filing per 154.203: Compliance to Order 801—Docket No. RM14–21–000 to be effective 6/1/2015.

Filed Date: 3/25/15.

Accession Number: 20150325–5015.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: RP15–678–000.

Applicants: Northern Border Pipeline Company.

Description: Compliance filing per 154.203: Compliance to Order 801—Docket No. RM14–21–000 to be effective 6/1/2015.

Filed Date: 3/25/15.

Accession Number: 20150325–5016.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: RP15–679–000.

Applicants: ANR Pipeline Company.

Description: Compliance filing per 154.203: Compliance to Order 801—Docket No. RM14–21–000 to be effective 6/1/2015.

Filed Date: 3/25/15.

Accession Number: 20150325–5043.

Comments Due: 5 p.m. ET 4/6/15.

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.

Filings in Existing Proceedings

Docket Numbers: RP15–523–002.

Applicants: Sabine Pipe Line LLC.

Description: Tariff Amendment per 154.205(b): Sabine LUAF and Fuel Amendment 2 to be effective 4/1/2015.

Filed Date: 3/24/15.

Accession Number: 20150324–5053.

Comments Due: 5 p.m. ET 3/30/15.

Docket Numbers: RP15–670–001.

Applicants: Enable Gas Transmission, LLC.

Description: Tariff Amendment per 154.205(b): Amendment to Fuel Tracker Filing Effective May 2015 to be effective 5/1/2015.

Filed Date: 3/24/15.

Accession Number: 20150324–5078.

Comments Due: 5 p.m. ET 4/6/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: March 25, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–07532 Filed 4–1–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–89–000]

Transcontinental Gas Pipe Line Company, Llc; Notice of Intent To Prepare an Environmental Assessment for the Proposed Garden State Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Garden State Expansion Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Burlington and Mercer Counties, New Jersey. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project.

Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on May 4, 2015.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Transco provided landowners and residents within a 0.5 mile radius around the proposed compression upgrades with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Transco proposes to construct and operate a new compressor station and a new meter and regulating station in Burlington County, New Jersey and construct and modify an existing compressor station and related appurtenant facilities in Mercer County, New Jersey. The Garden State Expansion Project would provide 180,000 dekatherms per day of natural gas to New Jersey Natural Gas Company. According to Transco, its project would provide system resiliency, service reliability, and operating flexibility for New Jersey Natural Gas Company's system.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 51.4 acres of land for the aboveground facilities. Following construction, Transco would maintain about 23.2 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects in consultation with the State Historic Preservation Office as the project develops. On natural gas facility projects, the Area of Potential Effects at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before May 4, 2015.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP15–89–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–89). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: March 26, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–07536 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–1375–000

McCoy Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of McCoy Solar, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is April 15, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 26, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–07533 Filed 4–1–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–576–000.

Applicants: Southwest Power Pool, Inc.

Description: eTariff filing per 35.19a(b): 2166R3 Westar Energy, Inc. Refund Report to be effective N/A.

Filed Date: 3/26/15.

Accession Number: 20150326–5048.

Comments Due: 5 p.m. ET 4/16/15.

Docket Numbers: ER15–579–000.

Applicants: Southwest Power Pool, Inc.

Description: eTariff filing per 35.19a(b): 2491R2 Westar Energy, Inc. Refund Report to be effective N/A.

Filed Date: 3/26/15.

Accession Number: 20150326–5055.

Comments Due: 5 p.m. ET 4/16/15.

Docket Numbers: ER15–1379–000.

Applicants: TransAlta Energy Marketing (U.S.) Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule No. 2 to be effective 5/24/2015.

Filed Date: 3/25/15.

Accession Number: 20150325–5267.

Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1380–000.

Applicants: Idaho Power Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Communications Interface Migration Agreement (LaGrande-Pocatello) w/PacifiCorp to be effective 3/24/2015.

Filed Date: 3/25/15.

Accession Number: 20150325–5285.

Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1381–000.

Applicants: HOP Energy, LLC.

Description: Tariff Withdrawal per 35.15: Cancellation of HOP Energy LLC MBR Tariff to be effective 3/31/2015.

Filed Date: 3/26/15.

Accession Number: 20150326–5072.

Comments Due: 5 p.m. ET 4/16/15.

Docket Numbers: ER15–1382–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–03–26_SA 2763 ATC-Escanaba FCA to be effective 3/27/2015.

Filed Date: 3/26/15.

Accession Number: 20150326–5083.

Comments Due: 5 p.m. ET 4/16/15.

Docket Numbers: ER15–1383–000.

Applicants: NSTAR Electric Company.

Description: Initial rate filing per 35.12 NSTAR–HQUS Transfer Agreement (CMEEC Use Rights) to be effective 5/26/2015.

Filed Date: 3/26/15.

Accession Number: 20150326–5182.

Comments Due: 5 p.m. ET 4/16/15.

Docket Numbers: ER15–1384–000.

Applicants: Alabama Power Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Butler Solar LGIA Filing to be effective 3/16/2015.

Filed Date: 3/26/15.

Accession Number: 20150326–5223.

Comments Due: 5 p.m. ET 4/16/15.

Docket Numbers: ER15–1385–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule No. 198—Agreement for Interconnection, Amendment No. 1 to be effective 5/26/2015.

Filed Date: 3/26/15.

Accession Number: 20150326–5231.

Comments Due: 5 p.m. ET 4/16/15.

Docket Numbers: ER15–1386–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement No. 343—Four Corners Circuit Breaker Replace with PacifiCorp to be effective 5/26/2015.

Filed Date: 3/26/15.

Accession Number: 20150326–5235.

Comments Due: 5 p.m. ET 4/16/15.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF15–569–000.

Applicants: Biogas Power Systems—Mojave, LLC.

Description: Form 556 of Biogas Power Systems—Mojave, LLC under QF15–569.

Filed Date: 3/25/15.

Accession Number: 20150325–5303.

Comments Due: None Applicable.

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: March 26, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–07530 Filed 4–1–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–668–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Penalty Revenue Crediting Report of Natural Gas Pipeline Company of America LLC.

Filed Date: 3/20/15.

Accession Number: 20150320–5268.

Comments Due: 5 p.m. ET 4/1/15.

Docket Numbers: RP15–669–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Section 4(d) rate filing per 154.204: OGT March 2015 Cleanup Filing to be effective 4/24/2015.

Filed Date: 3/23/15.

Accession Number: 20150323–5109.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: RP15–671–000.

Applicants: Enable Gas Transmission, LLC.

Description: Annual Revenue Crediting Filing of Enable Gas Transmission, LLC.

Filed Date: 3/23/15.

Accession Number: 20150323–5217.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: RP15–672–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Section 4(d) rate filing per 154.204: Nicor's Amendment to be effective 4/1/2015.

Filed Date: 3/23/15.

Accession Number: 20150323–5251.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: RP15–673–000.

Applicants: Equitrans, L.P.

Description: Section 4(d) rate filing per 154.204: Update LPS and LPS Form of Service Agreements to be effective 4/23/2015.

Filed Date: 3/23/15.

Accession Number: 20150323–5292.

Comments Due: 5 p.m. ET 4/6/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date.

Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–07531 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–53–000]

California Independent System Operator Corporation; Notice Setting Due Date for Interevention in Section 206 Proceeding

On March 16, 2015, the Commission issued an order in Docket Nos. EL15–53–000, and ER15–861–000 pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (2012), instituting an investigation to determine the justness and reasonableness of the Energy Imbalance Market provisions in the California Independent System Operator Corporation's existing tariff related to the imbalance energy price spikes in PacifiCorp's balancing authority areas. *California Independent System Operator Corporation*, 150 FERC ¶ 61,191 (2015). On March 17, 2015, the Commission issued a notice establishing a refund effective date.

Any interested persons desiring to be heard in Docket No. EL15–53–000 should file a notice of intervention or motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) by 5 p.m. ET on April 15, 2015. The Commission encourages electronic submission of interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original hard copy of the intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: March 26, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–07537 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9925–64–Region 1]

2015 Annual Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency (EPA) is announcing the 2015 Annual Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context. The Commission will be evaluating potential measures and considering actions in areas such as performance standards for electric generating units (EGUs) on high electric demand days, oil and gas boilers serving EGUs, small natural gas boilers, stationary generators, energy security/energy efficiency, architectural industrial and maintenance coatings, consumer products, institution commercial and industrial (ICI) boilers, vapor recovery at gas stations, large above ground storage tanks, seaports, aftermarket catalysts, lightering, and non-road idling.

DATES: The meeting will be held on June 4, 2015 starting at 9:30 a.m. and ending at 4:00 p.m.

Location: Holiday Inn Princeton hotel located at 100 Princeton Way, Princeton, NJ 085401; (609) 520–1200.

FOR FURTHER INFORMATION CONTACT: For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street NW., Suite 322, Washington, DC 20001; (202) 508–3840; email: *ozone@otcair.org;* Web site: *http://www.otcair.org* .

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by email: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org.*

Dated: March 11, 2015.

Deborah A. Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2015–07637 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0082; FRL–9925–61–OAR]; [EPA ICR No. 1736.07, OMB Control No. 2060.0328]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements Under EPA's Natural Gas STAR Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Reporting and Recordkeeping Requirements Under EPA's Natural Gas STAR Program'' (EPA ICR No. 1736.07, OMB Control No. 2060.0328) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through September 30, 2015. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 1, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0082, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jerome Blackman, Office of Atmospheric Programs, Climate Change Division, (6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9630; fax number: 202–343–2342; email address: *Blackman.Jerome@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Natural Gas STAR is a voluntary program sponsored by the U.S. Environmental Protection Agency (EPA) that encourages oil and natural gas companies to adopt cost effective technologies and practice that improve operational efficiency and reduce methane emissions. Methane is the primary component of natural gas and a potent greenhouse gas. The Program works with oil and natural gas companies in the production, gathering & processing, transmission, and distribution sectors to remove barriers that inhibit the implementation of technologies and practices that reduce methane emissions. The Program effectively promotes the adoption of emission reduction technologies and practices by helping Natural Gas Star partners evaluate Best Management Practices (BMPs) and Partner Reported Opportunities (PROs) in the context of their current operations, and implement them where cost effective. Implementation of the Program's BMPs and PROs saves participants money, improves operational efficiency, and enhances the protection of the environment.

Form Numbers

Natural Gas STAR partners are required to sign and submit to EPA a one-page Memorandum of Understanding (MOU) that describes the terms of participation in the Program. The MOU forms covered under this ICR include:

- Production Partners: EPA Form No. 5900–105
- Transmission Partners: EPA Form No. 5900–96
- Distribution Partners: EPA Form No. 5900–98
- Gathering and Processing Partners: EPA Form No. 5900–101
- International Partners: EPA Form No. 5900–108

Partners must complete and submit a Natural Gas STAR Implementation Plan within six to twelve months of signing the MOU. The Implementation Plan forms covered under this ICR include:

- Production Partners: EPA Form No. 5900–103
- Transmission Partners: EPA Form No. 5900–109
- Distribution Partners: EPA Form No. 5900–97
- Gathering and Processing Partners: EPA Form No. 5900–100
- International Partners: EPA Form No. 5900–106

After one full year of participation in the Program, EPA requires partners to submit an annual report documenting the previous year's methane emission reduction activities. The annual reporting forms covered under this ICR include:

- Production Partners: EPA Form No. 5900–104
- Transmission Partners: EPA Form No. 5900–95
- Distribution Partners: EPA Form No. 5900–99
- Gathering and Processing Partners: EPA Form No. 5900–102
- International Partners: EPA Form No. 5900–107

Respondents/affected entities: The gathering and processing, production, transmission, and distribution sectors of the natural gas industry.

Respondent's obligation to respond: voluntary

Estimated number of respondents: 109 (total).

Frequency of response: 109.

Total estimated burden: 5,201 hours (per year). Burden is defined at 5 CFR 1320.03(b)

T*otal estimated cost:* $477,657, includes $0 annualized capital or O&M costs.

Changes in Estimates: EPA expects that the burden associated with the final ICR submission will decrease slightly due to the Program's maturity and a decrease in number of new Program partners.

Dated: March 20, 2015.

Paul Gunning,

Director, Climate Change Division.

[FR Doc. 2015–07630 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9925–63–OA]

Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of scientific experts from a range of disciplines to be considered for appointment to the Clean Air Scientific Advisory Committee (CASAC).

DATES: Nominations should be submitted in time to arrive no later than May 4, 2015.

FOR FURTHER INFORMATION: General information about the CASAC is available at *http://www.epa.gov/casac* or by contacting Mr. Aaron Yeow, Designated Federal Officer (DFO) for the CASAC, EPA Science Advisory Board Staff Office (1400R), 1200 Pennsylvania Ave. NW., Washington DC 20460; by telephone at 202–564–2050 or by email at *yeow.aaron@epa.gov.*

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. The CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and NAAQS under sections 108

and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA). As amended, 5 U.S.C., App. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six ''criteria'' air pollutants. As a Federal Advisory Committee, the CASAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Members of the CASAC constitute a distinguished body of non-EPA scientists and engineers who are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator for a three-year term.

Request for Nominations: As required under the CAA section 109(d), the CASAC is composed of seven members, with at least one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The SAB Staff Office is seeking nominations of experts who have demonstrated experience in the following disciplines related to air pollution: *ecological and welfare effects; environmental engineering; exposure assessment; biostatistics; toxicology; epidemiology; and/or risk assessment.*

The SAB Staff Office is especially interested in scientists with expertise described above who have knowledge and experience in *air quality relating to criteria pollutants.* For further information about the CASAC membership appointment process and schedule, please contact Mr. Aaron Yeow, DFO, by telephone at 202–564–2050 or by email at *yeow.aaron@epa.gov.*

Selection Criteria for the CASAC include:

—Demonstrated scientific credentials and disciplinary expertise in relevant fields;

—Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees;

—Background and experiences that would help members contribute to the diversity of perspectives on the committee, *e.g.,* geographic, economic, social, cultural, educational backgrounds, professional affiliations, and other considerations; and

—For the committee as a whole, consideration of the collective breadth and depth of scientific expertise; and a balance of scientific perspectives.

As the committee undertakes specific advisory activities, the SAB Staff Office will consider two additional criteria for each new activity: absence of financial conflicts of interest and absence of an appearance of a loss of impartiality.

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) following the instructions for ''Nominating Experts for Annual Membership'' provided on the CASAC Web site. The form can be accessed through the ''Nomination of Experts'' link on the blue navigational bar on the CASAC Web site at *http://www.epa.gov/casac.* Nominators unable to submit nominations electronically as described below may submit a paper copy to Mr. Yeow at the contact information above. To be considered, all nominations should include the information requested. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The following information should be provided on the nomination form: contact information for the person making the nomination; contact information for the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's *curriculum vitae;* and a biographical sketch of the nominee indicating current position, educational background, research activities, sources of research funding for the last two years, and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination process or the public comment process described below, or who are unable to submit nominations through the CASAC Web site, should contact Mr. Yeow, Designated Federal Officer, as identified above. The DFO will acknowledge receipt of nominations and in that acknowledgement will invite the nominee to provide any additional information that the nominee feels would be useful in considering the nomination, such as: availability to participate as a member of the committee; how the nominee's background, skills and experience would contribute to the diversity of the committee; and any questions the nominee has regarding membership. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the CASAC Web site at *http://www.epa.gov/casac.* Public comments on this List of Candidates will be accepted for 21 days from the date the list is posted. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

Members of the CASAC serve as Special Government Employees. Therefore, candidates invited to serve will be asked to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a loss of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the blue navigational bar on the CASAC Web site at *http://www.epa.gov/casac.*

Dated: March 24, 2015.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2015–07634 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration Board; Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 9, 2015, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- March 12, 2015

B. Reports

- Quarterly Report on Economic Conditions and FCS Conditions

Closed Session*

- Office of Examination Quarterly Report

*Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8)and (9).

Dated: March 31, 2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2015–07682 Filed 3–31–15; 4:15 pm]

BILLING CODE CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: Always Mountain Time, LLC, Station KIDN–FM, Facility ID 57339, BPH–20140311ACI, From Burns, CO, To Hayden, CO; McNeese State University, Station KBYS, Facility ID 17277, BPED–20150226ABQ, From Moss Bluff, LA, To Lake Charles, LA; Radio Hatteras, Inc., Station WHDX, Facility ID 16416, BPED–20150223ABD, From Buxton, NC, To Waves, NC; Riverfront Broadcasting, LLC, Station KZKK, Facility ID 15267, BPH–20150213ADF, From Huron, SD, To Parkston, SD; Saver Media, Inc., Station KQTC, Facility Id 19041, BPH–20150204AAG, From Eldorado, TX, To Christoval, TX.

DATES: The agency must receive comments on or before June 1, 2015.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2015–07563 Filed 4–1–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 15–43; DA 15–253]

Media Bureau Seeks Comment for Report Required by the STELA Reauthorization Act of 2014

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document solicits public comments and data for use in preparation of a report required by the STELA Reauthorization Act of 2014. The report must contain an analysis of designated market areas and recommendations for fostering increased localism. The Commission is required to submit the report no later than June 3, 2016.

DATES: Comments may be filed on or before May 12, 2015, and reply comments may be filed on or before June 11, 2015.

ADDRESSES: You may submit comments, identified by MB Docket No. 15–43, DA–15–253, by any of the following methods:

- Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- Mail: Federal Communications Commission, 445 12th Street SW., Washington, DC, 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dan Bring, Media Bureau (202) 418–2164, TTY (202) 418–7172, or email at *Danny.Bring@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document in MB Docket No. 15–43, DA–15–253, released February 25, 2015. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554.

Synopsis

1. By this Public Notice, the Media Bureau seeks data, information, and comment for use in preparation of a report required by the STELA Reauthorization Act of 2014 (STELAR), Public Law 113–200, sec. 109, 128 Stat. 2059, 2065 (2014). Section 109 of STELAR requires the Commission to submit a report on designated market areas and considerations for fostering increased localism to the appropriate congressional committees not later than 18 months after the date of enactment (*i.e.,* June 3, 2016). Specifically, Section 109 states:

SEC. 109. REPORT ON DESIGNATED MARKET AREAS.

(a) IN GENERAL. Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to the appropriate congressional committees a report that contains—

(1) An analysis of—

(A) The extent to which consumers in each local market have access to broadcast programming from television broadcast stations located outside their local market, including through carriage by cable operators and satellite carriers of signals that are significantly viewed (within the meaning of section 340 of the Communications Act of 1934 (47 U.S.C. 340)); and

(B) Whether there are technologically and economically feasible alternatives to the use of designated market areas to define markets that would provide consumers with more programming

options and the potential impact such alternatives could have on localism and on broadcast television locally, regionally, and nationally; and

(2) Recommendations on how to foster increased localism in counties served by out-of-State designated market areas.

(b) CONSIDERATIONS FOR FOSTERING INCREASED LOCALISM. In making recommendations under subsection (a)(2), the Commission shall consider—

(1) The impact that designated market areas that cross State lines have on access to local programming;

(2) The impact that designated market areas have on local programming in rural areas; and

(3) The state of local programming in States served exclusively by out-of-State designated market areas.

2. The legislative history of Section 109 instructs the Commission to consider a number of factors in making its recommendations to foster increased localism in counties served by out-of-State designated market areas (DMA), including: (1) The impact DMAs that cross State lines have on access to local programming; (2) the impact DMAs have on local programming in rural areas; and (3) the impact such alternatives to the DMA system could have on localism, as well as broadcast television locally, regionally, and nationally. The legislative history also provides the following guidance regarding the report:

> The Committee intends that the FCC's report will interpret local programming to include not only television programming (in particular news, sports, weather, and other programming containing content relevant to a consumer's daily life) originating from and about the DMA in which a consumer resides, but also television programming originating from and about the State in which a consumer resides.
>
> The Committee also intends that the analysis concerning alternatives to the DMA system should explore in detail the merits and advantages to those alternatives to consumers, and not just the impact those alternatives may have on broadcast television.

3. To prepare the STELAR Section 109 Report, we seek comment on the appropriate methodologies and data sources, as well as the submission of data and information, to analyze the extent consumers have access to broadcast stations located outside their local markets. We ask commenters to identify technologically and economically feasible alternatives to DMAs that would provide more programming options and the potential impact of such alternatives on localism and on broadcast television locally, regionally, and nationally. We also ask commenters to provide recommendations that would foster localism in counties served by out-of-State DMAs and the impact of such recommendations as required under Section 109(b).

Data Analysis—Section 109(a)(1)(A)

4. Section 109(a)(1)(A) requires the Commission to analyze the extent to which consumers in each local market have access to broadcast programming from television broadcast stations located outside their local markets, including through carriage by cable operators and satellite carriers of signals that are significantly viewed (within the meaning of section 340 of the Communications Act of 1934 (47 U.S.C. 340)). We interpret Section 109(a)(1)(A) to require the Commission to identify in each DMA the out-of-market broadcast stations available over-the-air or carried by DBS, cable, and telephone MVPDs, and the number of consumers that have access to each out-of-market broadcast station through any of these distribution means. In 2011, pursuant to STELA, the Commission reported to Congress regarding the extent that consumers in a State receive broadcast signals from stations licensed to another State as well as the extent to which consumers have access to in-State broadcast programming, among other things. While the focus of the *Report to Congress pursuant to Section 304 of the Satellite Extension and Localism Act of 2010* (*2011 STELA Report)* differed somewhat from the requirements of Section 109, it provided information about consumer access to out-of-State and out-of-DMA broadcast stations. We believe, however, that information at the DMA level, as contained in the *2011 STELA Report,* may not be fully responsive to Congress' directive in STELAR. We note that Section 109(a)(2) seeks recommendations to foster localism in counties served by out-of-State DMAs. Thus, we believe we should report data on out-of-market broadcast stations on a county basis within each DMA. We request comment on this belief and input on additional data and analysis that would be fully responsive.

5. Section 109(a)(1)(A) requires us to consider access to broadcast programming, including through DBS and cable carriage. We seek comment on the appropriate methodologies and submission of essential data for the analysis. Do data exist that would allow us to determine consumer access to out-of-market broadcast programming from one source regardless of distribution technology? In the absence of one data source, we tentatively conclude that we should consider the availability of broadcast stations over-the-air by calculating the number of housing units in each DMA reached by the predicted broadcast signal contour of each out-of-market broadcast station, as we did in the *2011 STELA Report.* We seek comment on this tentative conclusion.

6. We believe we have access to comprehensive data for analysis of DBS carriage and over-the-air reception of out-of-market broadcast stations. We note that Section 108 of STELAR requires DBS carriers to provide data regarding satellite carriage of broadcast stations and that these data should be useful for this report. We seek comment on whether the Section 108 reports DBS operators submit are sufficient for this purpose. Will these reports include the carriage of significantly viewed signals that we must take into consideration?

7. With respect to cable and telephone MVPD carriage of out-of-market broadcast stations, we seek comment on what data are available that would be adequate for such analysis and what methodology we could use to analyze the available data. In 2011, pursuant to STELA, the Bureau was unable to provide separate data for cable and telephone MVPDs, and therefore instead the Bureau used Nielsen data to identify for each DMA the out-of-market broadcast television stations that earned a cumulative rating of at least 2.5 percent from all sources. Are comprehensive data available that would enable us to determine for each county in each DMA the out-of-market broadcast stations carried by each cable and telephone MVPD? In the absence of such data, we seek comment on the use of Nielsen data and the methodology used for the *2011 STELA Report.* What other options are available to the Commission to analyze this question?

8. In this regard, we note that the Commission collects cable system data in its Annual Report of Cable Television Systems (FCC Form 325) and in its Annual Report on Cable Prices, but these data are not comprehensive. Only a limited number of cable systems must file FCC Form 325. All cable systems with more than 20,000 subscribers are subject to the reporting requirement as are a sample of cable systems with fewer than 20,000 subscribers. Other than on a sample basis, cable systems with fewer than 20,000 subscribers, however, are not required to report information to the Commission. Also, many rural counties of interest to the STELAR Section 109 Report may be served by cable systems not subject to the requirement.

9. Cable systems subject to the FCC Form 325 reporting requirement provide

the Commission with a list of the broadcast stations carried by each reporting system. The geographic configuration of a cable system is determined by its physical system, which consists of a cable system technically integrated to a principal headend. Cable system data are provided for the entire system. The data do not correspond to census blocks, counties, DMAs, or other common geographic units and, therefore, cannot be aggregated or disaggregated to provide estimates for those geographic units or households. Thus, the data cable companies provide to the Commission do not permit analysis on a comparable geographic basis to data available for over-the-air broadcast stations, DBS carriage of broadcast stations, or the Bureau of the Census household data.

10. The Commission publishes annually a cable price report, which collects a listing of broadcast stations carried by a random sample of cable operators. According to the Bureau's most recent report, over 33,000 communities are served by cable operators. The report, however, included information on only 800 communities. As such, it does not provide comprehensive data and many rural counties of interest to the STELAR Section 109 Report may be served by cable operators not included in the Commission's cable price report. We seek comment on the availability of other more comprehensive data sources that might be available to the Commission to perform the required analysis.

11. In the absence of comprehensive data, we propose including case studies for specific counties where commenters have indicated a lack of local programming. In 2011, pursuant to STELA, the Bureau undertook a number of case studies for specific counties in which commenters indicated a lack of in-State broadcast programming. For each case, the Bureau examined the extent to which consumers had access to in-State programming over the air, from cable operators and from DBS operators on a county basis within each relevant DMA. The Bureau described the availability of in-State broadcast stations and the carriage of in-State stations by DBS operators and cable systems. For cable system information, the Bureau identified the cable systems in the counties and communities under study using the Commission's Cable Operations and Licensing System. To determine the carriage of in-State broadcast stations, the Bureau used cable operators' 2010 FCC Form 325 submissions, to the extent they were available, and publicly available information, including the Warren Television & Cable Factbook data and the Web sites of individual cable systems.

12. For each case study for the STELAR Section 109 Report, we propose to examine, using the best available information, the extent to which consumers have access to out-of-market broadcast programming from DBS, cable, and telephone MVPDs, and over the air. We seek comment on the use of case studies for our report. Is there a better approach to case studies? We seek data, information, and comment for the analysis of cable and telephone MVPD carriage of out-of-market broadcast stations.

13. Out-of-market broadcast stations may provide multiple programming streams. Should the STELAR Section 109 Report include all out-of-market broadcast programming? We seek comment on the appropriate methodologies and the availability of data for including multiple programming steams. Are there other mechanisms for carriage that we should include (*e.g.,* online access to broadcast programming)? Commenters are asked to consider these issues and to provide any additional suggestions and data for the quantitative analysis required for this Report.

Alternatives and Recommendations—Sections 109(a)(1)(B), (a)(2), and (b)

14. Sections 109(a)(1)(B), (a)(2), and (b) require the Commission to analyze alternatives to the use of DMAs to define markets and to make recommendations on how to foster increased localism in counties served by out of State DMAs taking into account a number of factors. Specifically, Section 109(a)(1)(B) requires the Commission to analyze whether there are technologically and economically feasible alternatives to the use of designated market areas to define markets that would provide consumers with more programming options and the potential impact such alternatives could have on localism and on broadcast television locally, regionally, and nationally. Section 109(a)(2) requires the Commission to make recommendations on how to foster increased localism in counties served by out-of-State designated market areas. Section 109(b) directs the Commission to consider three enumerated factors related to the impact of DMAs on access to local programming when making its recommendations.

15. We ask commenters to provide suggested alternatives to the use of DMAs to define market areas, pursuant to Section 109(a)(1)(B). For each alternative, we request that commenters explain how the alternative would provide consumers with more programming options and what the impact would be on localism and on broadcast television locally, regionally and nationally. What specific programming options should we consider in our analysis? For instance, should we consider news, sports, weather, coverage of State-level politics and government, or other content relevant to a consumers' daily life, including advertising from local businesses, and if so how should we identify and consider such content? Commenters also should address the technological and economic feasibility of each alternative proposed and provide data and information on these issues. To analyze the various alternatives, we request suggestions on how to evaluate and compare the proposed alternatives for the STELAR Section 109 Report.

16. Section 109(a)(2) requires the Commission to make recommendations on how to foster increased localism in counties served by out-of-State DMAs. In making recommendations, Section 109(b) instructs the Commission to consider: (1) the impact that DMAs that cross State lines have on access to local programming; (2) the impact that DMAs have on local programming in rural areas; and (3) the state of local programming in States served exclusively by out-of-State DMAs. We seek recommendations that could increase television programming from and about the DMA, and television programming from and about the State, in which a consumer resides. We specifically ask commenters to address the three considerations identified in Section 109(b). In particular, how do DMAs affect access to local programming for each of the three areas of concern? To what extent do consumers in DMAs that cross State lines have access to television programming from and about their State? How will the proposed recommendations foster increased local programming for consumers residing in such locations?

17. To assist us in analyzing proposed recommendations that we will consider including in the STELAR Section 109 Report, we also seek comment on the effects of each recommendation on consumers, local broadcast stations, the number of stations that MVPDs would be required to carry, the advertising market, broadcast network affiliation agreements and areas of exclusivity. What would be the benefits and costs of each recommendation? How would the

proposed recommendation provide consumers with increased local programming without curtailing the broadcast programming consumers currently view? Are there other criteria we should consider when evaluating recommendations to foster increased localism? We seek comment on these issues and any other comments that address the requirements of Section 109 of STELAR.

Procedural Matters

18. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

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

19. For further information about this Public Notice, please contact Marcia Glauberman at (202) 418–7046, *marcia.glauberman@fcc.gov* or Dan Bring at (202) 418–2164, *danny.bring@fcc.gov.* Press inquiries should be directed to Janice Wise at (202) 418–8165, *janice.wise@fcc.gov.*

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2015–07561 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012324.

Title: NMCC/Grimaldi Space Charter Agreement.

Parties: Grimaldi Deep Sea S.p.A; Grimaldi Euromed S.p.A.; Nissan Motor Car Carrier Co., Ltd.; World Logistics Service (U.S.A.), Inc.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900, Washington, DC 20004.

Synopsis: The Agreement authorizes the parties to charter space to/from one another for the transportation of vehicles and other Ro/Ro cargo in the trade between the United States, on the one hand, and Europe, Africa, the Mediterranean, and the Middle East on the other hand.

By Order of the Federal Maritime Commission.

Dated: March 27, 2015.

Karen V. Gregory,

Secretary.

[FR Doc. 2015–07487 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6730–01–P

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 2015.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First State Bancorp, Inc., Combined Retirement Benefit Plan (formerly known as First State Bancorp, Inc. Employee Stock Ownership Plan),* Caruthersville, Missouri; to acquire additional voting shares, for a total of 40 percent, of the voting shares of First State Bancorp, Inc., and thereby indirectly acquire voting shares of First State Bank and Trust Company, Inc., both in Caruthersville, Missouri.

Board of Governors of the Federal Reserve System, March 30, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–07557 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 17, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Elizabeth J. Hyduke-Kelm, Golden Valley, Minnesota, individually and as co-Trustee of a trust benefiting Elizabeth J. Hyduke-Kelm, and Elizabeth J. Hyduke-Kelm as co-Trustee of three family trusts, Minneapolis, Minnesota; and Stephen P. Hyduke, individually and as co-Trustee of a trust benefiting Stephen P. Hyduke,* Minneapolis, Minnesota; to each acquire voting shares of Duke Financial Group, Inc., Minneapolis, Minnesota, and thereby indirectly acquire voting shares of Peoples Bank of Commerce, Cambridge, Minnesota, and State Bank of New Prague, New Prague, Minnesota.

Board of Governors of the Federal Reserve System, March 30, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–07556 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for the FTC's enforcement of the information collection requirements in four consumer financial regulations enforced by the Commission. Those clearances expire on June 30, 2015.

DATES: Comments must be filed by June 1, 2015.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Regs BEMZ, PRA Comments, P084812'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/RegsBEMZpra* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Carole Reynolds or Thomas Kane, Attorneys, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: The four regulations covered by this notice are:

(1) Regulations promulgated under the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (''ECOA'') (''Regulation B'') (OMB Control Number: 3084–0087);

(2) Regulations promulgated under the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* (''EFTA'') (''Regulation E'') (OMB Control Number: 3084–0085);

(3) Regulations promulgated under the Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* (''CLA'') (''Regulation M'') (OMB Control Number: 3084–0086); and

(4) Regulations promulgated under the Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* (''TILA'') (''Regulation Z'') (OMB Control Number: 3084–0088).

The FTC enforces these statutes as to all businesses engaged in conduct these laws cover unless these businesses (such as federally chartered or insured depository institutions) are subject to the regulatory authority of another federal agency.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Public Law 111–203, 124 Stat. 1376 (2010), almost all rulemaking authority for the ECOA, EFTA, CLA, and TILA transferred from the Board of Governors of the Federal Reserve System (Board) to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011 (''transfer date''). To implement this transferred authority, the CFPB published for public comment and issued interim final rules for new regulations in 12 CFR part 1002 (Regulation B), 12 CFR part 1005 (Regulation E), 12 CFR part 1013 (Regulation M), and 12 CFR 1026 (Regulation Z) for those entities under its rulemaking jurisdiction.[1] Although the Dodd-Frank Act transferred most rulemaking authority under ECOA, EFTA, CLA, and TILA to the CFPB, the Board retained rulemaking authority for certain motor vehicle dealers[2] under all of these statutes and also for certain interchange-related requirements under EFTA.[3]

As a result of the Dodd-Frank Act, the FTC and the CFPB now share the authority to enforce Regulations B, E, M, and Z for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers. Because of this shared enforcement jurisdiction, the two agencies have divided the FTC's previously-cleared PRA burden between them,[4] except that the FTC retained all of the part of that burden associated with motor vehicle dealers (for brevity, referred to in the burden summaries below as a ''carve-out'').[5] The division of PRA burden

[1] 12 CFR 1002 (Reg. B) (76 FR 79442, Dec. 21, 2011); 12 CFR 1005 (Reg. E) (76 FR 81020, Dec. 27, 2011); 12 CFR 1013 (Reg. M) (76 FR 78500, Dec. 19, 2011); 12 CFR 1026 (Reg. Z) (76 FR 79768, Dec. 22, 2011).

[2] Generally, these are dealers ''predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' *See* Dodd-Frank Act, § 1029(a), –(c).

[3] *See* Dodd-Frank Act, § 1075 (these requirements are implemented through Board Regulation II, 12 CFR 235, rather than EFTA's implementing Regulation E).

[4] The CFPB also factored into its burden estimates respondents over which it has jurisdiction but the FTC does not.

[5] See Dodd-Frank Act § 1029 (a), as limited by subsection (b). Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offered is provided directly from those businesses, rather than unaffiliated third parties, to consumers. It is not practicable, however, for PRA purposes, to estimate the portion of dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight). Thus, FTC staff's ''carve-out'' for this PRA burden analysis reflects a general estimated volume of motor vehicle dealers. This attribution does not change actual enforcement authority.

hours not attributable to motor vehicle dealers is reflected in the CFPB's PRA clearance requests to OMB, as well as in the FTC's burden estimates below.

As a result of the Dodd-Frank Act, the FTC generally has sole authority to enforce Regulations B, E, M, and Z regarding certain motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, that, among other things, assign their contracts to unaffiliated third parties.[6] Because the FTC has exclusive jurisdiction to enforce these rules for such motor vehicle dealers and retains its concurrent authority with the CFPB for other types of motor vehicle dealers, and in view of the different types of motor vehicle dealers, the FTC is including for itself the entire PRA burden for all motor vehicle dealers in the burden estimates below.

The regulations impose certain recordkeeping and disclosure requirements associated with providing credit or with other financial transactions. Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. *See* 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

All four of these regulations require covered entities to keep certain records, but FTC staff believes these records are kept in the normal course of business even absent the particular recordkeeping requirements.[7] Covered entities, however, may incur some burden associated with ensuring that they do not prematurely dispose of relevant records (*i.e.,* during the time span they must retain records under the applicable regulation).

The regulations also require covered entities to make disclosures to third-parties. Related compliance involves set-up/monitoring and transaction-specific costs. ''Set-up'' burden, incurred only by covered new entrants, includes their identifying the applicable required disclosures, determining how best to comply, and designing and developing compliance systems and procedures. ''Monitoring'' burden, incurred by all covered entities, includes their time and costs to review changes to regulatory requirements, make necessary revisions to compliance systems and procedures, and to monitor the ongoing operation of systems and procedures to ensure continued compliance. ''Transaction-related'' burden refers to the time and cost associated with providing the various required disclosures in individual transactions. While this burden varies with the number of transactions, the figures shown for transaction-related burden in the tables that follow are estimated averages.

The required disclosures do not impose PRA burden on some covered entities because they make those disclosures in their normal course of activities. For other covered entities that do not, their compliance burden will vary widely depending on the extent to which they have developed effective computer-based or electronic systems and procedures to communicate and document required disclosures.[8]

Calculating the burden associated with the four regulations' disclosure requirements is very difficult because of the highly diverse group of affected entities. The ''respondents'' included in the following burden calculations consist of, among others, credit and lease advertisers, creditors, owners (such as purchasers and assignees) of credit obligations, financial institutions, service providers, certain government agencies and others involved in delivering electronic fund transfers (''EFTs'') of government benefits, and lessors.[9] The burden estimates represent FTC staff's best assessment, based on its knowledge and expertise relating to the financial services industry. Staff considered the wide variations in covered entities' (1) size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) EFT types used; (4) types and frequency of adverse actions taken; (5) types of appraisal reports utilized; and (6) computer systems and electronic features of compliance operations.

The cost estimates that follow relate solely to labor costs, and they include the time necessary to train employees how to comply with the regulations. Staff calculated labor costs by multiplying appropriate hourly wage rates by the burden hours described above. The hourly rates used were $56 for managerial oversight, $42 for skilled technical services, and $17 for clerical work. These figures are averages drawn from Bureau of Labor Statistics data.[10] Further, the FTC cost estimates assume the following labor category apportionments, except where otherwise indicated below: Recordkeeping—10% skilled technical, 90% clerical; disclosure—10% managerial, 90% skilled technical.

The applicable PRA requirements impose minimal capital or other non-labor costs. Affected entities generally already have the necessary equipment for other business purposes. Similarly, FTC staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the ordinary course of business.

1. Regulation B

The ECOA prohibits discrimination in the extension of credit. Regulation B implements the ECOA, establishing disclosure requirements to assist customers in understanding their rights under the ECOA and recordkeeping requirements to assist agencies in enforcement. Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, and others.

Recordkeeping

FTC staff estimates that Regulation B's general recordkeeping requirements affect 530,080 credit firms subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per firm for a total of 662,600 hours.[11] Staff also estimates that the requirement that mortgage creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each (of skilled

[6] *See* Dodd-Frank Act, § 1029(a), –(c).

[7] PRA ''burden'' does not include effort expended in the ordinary course of business, regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[8] For example, large companies may use computer-based and/or electronic means to provide required disclosures, including issuing some disclosures en masse, *e.g.,* notices of changes in terms. Smaller companies may have less automated compliance systems but may nonetheless rely on electronic mechanisms for disclosures and recordkeeping. Regardless of size, some entities may utilize compliance systems that are fully integrated into their general business operational system; if so, they may have minimal additional burden. Other entities may have incorporated fewer of these approaches into their systems and thus may have a higher burden.

[9] The Commission generally does not have jurisdiction over banks, thrifts, and federal credit unions under the applicable regulations.

[10] These inputs are based broadly on mean hourly data found within the ''Bureau of Labor Statistics, Economic News Release,'' April 1, 2014, Table 1, ''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013.'' *http://www.bls.gov/news.release/ocwage.t01.htm.*

[11] Section 1071 of the Dodd-Frank Act amends the ECOA to require financial institutions to collect and report information concerning credit applications by women- or minority-owned businesses and small businesses, effective on the July 21, 2011 transfer date. Both the CFPB and the Board have exempted affected entities from complying with this requirement until a date set by the prospective final rules these agencies issue to implement the Dodd-Frank Act's requirements. The Commission will address PRA burden for its enforcement of these requirements after the CFPB and the Board have issued the associated final rules.

technical time) for approximately 2.9 million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 48,333 hours.[12] Staff also estimates that recordkeeping of self-testing subject to the regulation would affect 1,375 firms, with an average annual burden of one hour (of skilled technical time) per firm, for a total of 1,375 hours, and that recordkeeping of any corrective action as a result of self-testing would affect 10% of them, *i.e.,* 138 firms, with an average annual burden of four hours (of skilled technical time) per firm, for a total of 552 hours.[13] Keeping records of race/national origin, sex, age, and marital status requires an estimated one minute of skilled technical time. Recordkeeping for the self-test responsibility and of any corrective actions requires an estimated one hour and four hours, respectively, of skilled technical time.

Disclosure

Regulation B requires that creditors (*i.e.,* entities that regularly participate in the decision whether to extend credit under Regulation B) provide notices whenever they take adverse action, such as denial of a credit application. It requires entities that extend mortgage credit with first liens to provide a copy of the appraisal report or other written valuation to applicants.[14] Finally, Regulation B also requires that for accounts which spouses may use or for which they are contractually liable, creditors who report credit history must do so in a manner reflecting both spouses' participation. Further, it requires creditors that collect applicant characteristics for purposes of conducting a self-test to disclose to those applicants that: (1) Providing the information is optional; (2) the creditor will not take the information into account in any aspect of the credit transactions; and (3) if applicable, the information will be noted by visual observation or surname if the applicant chooses not to provide it.[15]

Burden Totals

Recordkeeping: 712,860 hours (637,310 + 75,550 carve-out for motor vehicles); $15,031,620 ($13,550,520 + $1,481,100 carve-out for motor vehicles), associated labor costs.

Disclosures: 1,166,563 hours (1,036,040 + 130,523 carve-out for motor vehicles); $50,628,816 ($44,964,122 + $5,664,694 carve-out for motor vehicles), associated labor costs.

REGULATION B—DISCLOSURES—BURDEN HOURS

Disclosures	Setup/Monitoring [1]			Transaction-related [2]			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/ monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Credit history reporting	132,520	.25	33,130	66,260,000	.25	276,083	309,213
Adverse action notices	530,000	.75	397,500	106,016,000	.25	441,733	839,293
Appraisal reports/written valuations	5,000	1	5,000	1,450,000	.50	12,083	17,083
Self-test disclosures	1,375	.5	688	68,750	.25	286	974
Total							1,166,563

[1] The estimates assume that all applicable entities would be affected, with respect to appraisal reports and other written valuations (with the FTC having approximately one-half of that amount). An increase in burden is noted due to changed rules requiring provision of appraisals reports as well as other written valuations, for first lien mortgages. The former ''Appraisal disclosure'' item was deleted; the information is now supplied by the rule.

[2] The transaction-related figures reflect a decrease in mortgage transactions, compared to prior FTC estimates. The figures assume that approximately three-quarters of applicable mortgage transactions (.75 × 2,900,000, or 2,175,000) would not otherwise provide this information, and that another 725,000 transactions (not closed, etc.) would be affected; the FTC would have one-half of the total, or 1,450,000.

REGULATION B—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total Cost ($)
	Time (hours)	Cost ($56/hr.)	Time (hours)	Cost ($42/hr.)	Time (hours)	Cost ($17/hr.)	
General recordkeeping	0	$0	66,260	$2,782,920	596,340	$10,137,780	$12,920,700
Other recordkeeping	0	0	48,333	2,029,986	0	0	2,029,986
Recordkeeping of self-test	0	0	1,375	57,750	0	0	57,750
Recordkeeping of corrective action	0	0	552	23,184	0	0	23,184
Total Recordkeeping							15,031,620
Disclosures:							
Credit history reporting	30,921	1,731,576	278,292	11,688,264	0	0	13,419,840
Adverse action notices	83,929	4,700,024	755,364	31,725,288	0	0	36,425,312

[12] Regulation B contains model forms that creditors may use to gather and retain the required information.

[13] In contrast to banks, for example, entities under FTC jurisdiction are not subject to audits for compliance with Regulation B; rather they may be subject to FTC investigations and enforcement actions. This may impact the level of self-testing (as specifically defined by Regulation B) in a given year, and staff has sought to address such factors in its burden estimates.

[14] While the rule also requires the creditor to provide a short written disclosure regarding the appraisal process, the disclosure is now provided by the CFPB, and may be classified as a warning label supplied by the Federal government. As a result, it is not a ''collection of information'' for PRA purposes; it is not, therefore, included in burden estimates below. *See* 5 CFR 1320.3(c)(2), and CFPB, Final Rule, Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7216, 7247 (Jan. 31, 2013).

[15] The disclosure may be provided orally or in writing. The model form provided by Regulation B assists creditors in providing the written disclosure.

REGULATION B—RECORDKEEPING AND DISCLOSURES—COST—Continued

Required task	Managerial		Skilled technical		Clerical		Total Cost ($)
	Time (hours)	Cost ($56/hr.)	Time (hours)	Cost ($42/hr.)	Time (hours)	Cost ($17/hr.)	
Appraisal reports	1708	95,648	15,375	645,750	0	0	741,398
Self-test disclosure	97	5,432	877	36,834	0	0	42,266
Total Disclosures							50,628,816
Total Record-keeping and Disclosures							65,660,436

2. Regulation E

The EFTA requires that covered entities provide consumers with accurate disclosure of the costs, terms, and rights relating to EFT and certain other services. Regulation E implements the EFTA, establishing disclosure and other requirements to aid consumers and recordkeeping requirements to assist agencies with enforcement. It applies to financial institutions, retailers, gift card issuers and others that provide gift cards, service providers, various federal and state agencies offering EFTs, etc. Staff estimates that Regulation E's recordkeeping requirements affect 327,460 firms offering EFT services to consumers and that are subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 327,460 hours.

Burden Totals

Recordkeeping: 327,460 hours (312,500 + 15,040 carve-out); $6,385,470 ($6,092,190 + $293,280 carve-out), associated labor costs.

Disclosures: 7,179,271 hours (7,162,564 + 16,707 carve-out); $311,588,696 ($310,863,608 + $725,088 carve-out), associated labor costs.

REGULATION E—DISCLOSURES—BURDEN HOURS

Disclosures	Setup/Monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/ monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Initial terms	50,000	.5	25,000	500,000	.02	167	25,167
Change in terms	12,500	.5	6,250	16,500,000	.02	5,500	11,750
Periodic statements	50,000	.5	25,000	600,000,000	.02	200,000	225,000
Error resolution	50,000	.5	25,000	500,000	5	41,667	66,667
Transaction receipts	50,000	.5	25,000	2,500,000,000	.02	833,333	858,333
Preauthorized transfers [1]	257,520	.5	128,760	6,438,000	.25	26,825	155,585
Service provider notices	50,000	.25	12,500	500,000	.25	2,083	14,583
Govt. benefit notices	5,000	.5	2,500	50,000,000	.25	208,333	210,833
ATM notices	250	.25	63	50,000,000	.25	208,333	208,396
Electronic check conversion [2]	57,520	.5	28,760	1,150,400	.02	383	29,144
Payroll cards	125	.5	63	500,000	3	25,000	25,063
Overdraft services	50,000	.5	25,000	2,500,000	.02	833	25,833
Gift cards [3]	25,000	.5	12,500	1,250,000,000	.02	416,667	429,167
Remittance transfers: [4]							
Disclosures	5,000	1.25	6,250	100,000,000	.9	1,500,000	1,506,250
Error resolution	5,000	1.25	6,250	125,000,000	.9	1,875,000	1,881,250
Agent compliance	5,000	1.25	6,250	100,000,000	.9	1,500,000	1,506,250
Total							7,179,271

[1] Preauthorized transfer respondents and transactions have decreased slightly.
[2] Electronic check conversion respondents and transactions have decreased slightly.
[3] Gift card entities and transactions under FTC jurisdiction (which excludes banks and bank transactions) have decreased.
[4] Remittance transfer respondents now focus primarily on those that may offer services and are responsible for legal requirements (not separate inclusion of their offices). Legal changes have eased compliance, but they require system changes causing an increase in setup burden and a decrease in transaction burden. Remittance transfers have increased substantially but error resolutions have increased to a smaller degree due to changes in legal requirements. The resulting transaction burden in each category for remittance transfers has increased due to the upswing in transaction volume.

REGULATION E—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($56/hr.)	Time (hours)	Cost ($42/hr.)	Time (hours)	Cost ($17/hr.)	
Recordkeeping	0	$0	32,746	$1,375,332	294,714	$5,010,138	$6,385,470
Disclosures:							
Initial terms	2,517	140,952	22,650	951,300	0	0	1,092,252
Change in terms	1,175	65,800	10,750	451,500	0	0	517,300
Periodic statements	22,500	1,260,000	202,500	8,505,000	0	0	9,765,000
Error resolution	6,667	373,352	60,000	2,520,000	0	0	2,893,352
Transaction receipts	85,833	4,806,648	772,500	32,445,000	0	0	37,251,648
Preauthorized transfers	15,565	871,248	140,027	5,881,134	0	0	6,752,382
Service provider notices	1,458	81,648	13,125	551,250	0	0	632,898
Govt. benefit notices	21,083	1,180,648	189,750	7,969,500	0	0	9,150,148
ATM notices	20,840	1,167,040	187,556	7,877,352	0	0	9,044,392
Electronic check conversion	2,919	163,184	26,230	1,101,660	0	0	1,264,844
Payroll cards	2,506	140,336	22,557	947,394	0	0	1,087,730
Overdraft services	2,583	144,648	23,250	976,500	0	0	1,121,148
Gift cards	85,833	2,403,352	386,250	16,222,500	0	0	18,626,852
Remittance transfers:							
Disclosures	150,625	8,435,000	1,355,625	56,936,250	0	0	65,371,250
Error resolution	188,125	10,535,000	1,693,125	71,111,250	0	0	81,646,250
Agent compliance	150,625	8,435,000	1,355,625	56,936,250	0	0	65,371,250
Total Disclosures	.....	.....	.....	.....	.....	.....	311,588,696
Total Recordkeeping and Disclosures	.....	.....	.....	.....	.....	.....	317,974,166

3. Regulation M

The CLA requires that covered entities provide consumers with accurate disclosure of the costs and terms of leases. Regulation M implements the CLA, establishing disclosure requirements to help consumers comparison shop and understand the terms of leases and recordkeeping requirements. It applies to vehicle lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, diverse types of lease advertisers, and others.

Staff estimates that Regulation M's recordkeeping requirements affect approximately 32,577 firms within the FTC's jurisdiction leasing products to consumers at an average annual burden of one hour per firm, for a total of 32,577 hours.

Burden Totals [16]

Recordkeeping: 32,577 hours (5,000 + 27,577 carve-out); $635,259 ($97,500 + $537,759 carve-out), associated labor costs.

Disclosures: 73,933 hours (2,986 + 70,947 carve-out); $3,208,702 ($129,598 + $3,079,104 carve-out), associated labor costs.

REGULATION M—DISCLOSURES—BURDEN HOURS

Disclosures	Setup/Monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burder per respondent (hours)	Total setup/ monitoring burden (hours)	Number of transactions	Average burdern per transaction	Total transaction burden (hours)	
Motor Vehicle Leases [1]	27,577	1	27,577	4,000,000	.50	33,333	60,910
Other Leases [2]	5,000	.50	2,500	100,000	.25	417	2,917
Advertising [3]	15,181	.50	7,591	603,490	.25	2,515	10,106
Total	.....	.....	.....	.....	.....	.....	73,933

[1] This category focuses on consumer vehicle leases. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) *See* 15 U.S.C. 1667(1); 12 CFR 1013.2(e)(1). While the number of respondents for vehicle leases has decreased, the number of vehicle lease transactions has increased, with market changes, from past FTC estimates. Additionally, leases up to $54,600 (plus an annual adjustment) are now covered. The resulting total burden has increased.

[16] Recordkeeping and disclosure burden estimates for Regulation M are more substantial for motor vehicle leases than for other leases, including burden estimates based on market changes and regulatory definitions of coverage. As noted above, for purposes of burden calculations, and in view of the different types of motor vehicle dealers, the FTC is including for itself the entire PRA burden for all motor vehicle dealers in the burden estimates below.

[2] This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumer leases for more than four months are covered.) *See* 15 U.S.C. 1667(1); 12 CFR 1013.2(e)(1). The number of respondents has decreased, based on market changes in companies and types of transactions they offer, and the PRA burden sharing with the CFPB; the number of such transactions has also declined, based on types of transactions offered that are covered by the CLA. Leases up to $54,600 (plus an annual adjustment) are now covered. The resulting total burden has decreased.

[3] Respondents for advertising have increased as have lease advertisements, based on market changes, from past FTC estimates. More types of lease advertisements are occurring. The resulting total burden has increased.

REGULATION M—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($56/hr.)	Time (hours)	Cost ($42/hr.)	Time (hours)	Cost ($17/hr.)	
Recordkeeping	0	$0	3,258	$136,836	29,319	$498,423	$635,259
Disclosures:							
Motor Vehicle Leases	6,091	341,096	58,419	2,302,398	0	0	2,643,494
Other Leases	292	16,352	2,625	110,250	0	0	126,602
Advertising	1,011	56,616	9,095	381,990	0	0	438,606
Total Disclosures							3,208,702
Total Recordkeeping and Disclosures							3,843,961

4. Regulation Z

The TILA was enacted to foster comparison credit shopping and informed credit decision making by requiring creditors and others to provide accurate disclosures regarding the costs and terms of credit to consumers. Regulation Z implements the TILA, establishing disclosure requirements to assist consumers and recordkeeping requirements to assist agencies with enforcement. These requirements pertain to open-end and closed-end credit and apply to various types of entities, including mortgage companies; finance companies; auto dealerships; private education loan companies; merchants who extend credit for goods or services; credit advertisers; acquirers of mortgages; and others. New requirements have been established in the mortgage area, including for high cost mortgages, higher-priced mortgage loans,[17] ability to pay of mortgage consumers, mortgage servicing, loan originators, and certain integrated mortgage disclosures.

FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 530,080 entities subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per entity with .25 additional hours per entity for 5,000 entities (ability to pay), and 5 additional hours per entity for 5,000 entities (loan originators).

Burden Totals

Recordkeeping: 688,850 hours (613,650 + 75,200 carve-out); $13,432,575 ($11,966,175 + $1,466,400 carve-out), associated labor costs.

Disclosures: 13,008,452 hours (11,964,361 + 1,044,091 carve-out); $553,563,761 ($508,250,213 + $45,313,548 carve-out), associated labor costs.

REGULATION Z—DISCLOSURES—BURDEN HOURS

Disclosures [1]	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent [2] (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction [3]	Total transaction burden (hours)	
Open-end credit:							
Initial terms	45,000	.75	33,750	20,000,000	.375	125,000	158,750
Rescission notices [4]	1,500	.5	750	8,000	.25	33	783
Subsequent disclosures	10,000	.75	7,500	62,500,000	.188	195,833	203,333
Periodic statements	45,000	.75	33,750	1,750,000,000	.0938	2,735,833	2,769,583
Error resolution	45,000	.75	33,750	4,000,000	6	400,000	433,750
Credit and charge card accounts	25,000	.75	18,750	12,500,000	.375	78,125	96,875
Settlement of estate debts	45,000	.75	33,750	1,000,000	.375	6,250	40,000
Special credit card requirements	25,000	.75	18,750	12,500,000	.375	78,125	96,875
Home equity lines of credit [5]	1,500	.5	750	10,000	.25	42	792
Home equity lines of credit-high cost mortgages [6]	500	2	1,000	5,000	2	167	1,167
College student credit card marketing—ed. institutions	2,500	.5	1,250	250,000	.25	1,042	2,292
College student credit card marketing—card issuer reports	300	.75	225	18,000	.75	225	450
Posting and reporting of credit card agreements	25,000	.75	18,750	12,500,000	.375	78,125	96,875
Advertising	100,000	.75	75,000	300,000	.75	3,750	78,750

[17] While Regulation Z also requires the creditor to provide a short written disclosure regarding the appraisal process for higher-priced mortgage loans, the disclosure is now provided by the CFPB, and may be classified as a label supplied by the Federal government. As a result, it is not a ''collection of information'' for PRA purposes; it is not, therefore, included in burden estimates below. *See* 5 CFR 1320.3(c)(2), and CFPB, Final Rule, Appraisals for Higher-Priced Mortgage Loans, 78 FR 10368, 10430 (Feb. 13, 2013), and Supplemental Final Rule, Appraisals for Higher-Priced Mortgage Loans, 78 FR 78520, 78575 (Dec. 26, 2013).

REGULATION Z—DISCLOSURES—BURDEN HOURS—Continued

Disclosures [1]	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent [2] (hours)	Total setup/ monitoring burden (hours)	Number of transactions	Average burden per transaction [3]	Total transaction burden (hours)	
Sale, transfer, or assignment of mortgages [7]	1,500	.5	750	1,750,000	.25	7,292	8,042
Appraiser misconduct reporting	625,000	.75	468,750	12,500,000	.375	78,125	546,875
Mortgage servicing [8]	2,500	.5	1,250	500,000	.5	4,167	5,417
Loan originators [9]	2,500	2	5,000	25,000	5	2,083	7,083
Closed-end credit:							
Credit disclosures [10]	380,080	.75	285,060	163,054,320	2.25	6,108,912	6,399,597
Rescission notices [11]	5,000	.5	2,500	7,500,000	1	125,000	127,500
Redisclosures	200,000	.5	100,000	1,000,000	2.25	37,500	137,500
Integrated mortgage disclosures [12]	5,000	10	50,000	15,000,000	3.5	875,000	925,000
Variable rate mortgages [13]	5,000	1	5,000	500,000	1.75	14,583	19,583
High cost mortgages [14]	3,000	1	3,000	75,000	2	2,500	5,500
Higher priced mortgages [15]	3,000	1	3,000	25,000	2	833	3,833
Reverse mortgages [16]	7,500	.5	3,750	35,000	1	583	4,333
Advertising [17]	248,360	.5	124,180	2,483,600	1	41,393	165,573
Private education loans	100	.5	50	50,000	1.5	1,250	1,300
Sale, transfer, or assignment of mortgages	100,000	.5	50,000	5,000,000	.25	20,833	70,833
Ability to pay/qualified mortgage [18]	5,000	.75	3,750	0	0	0	3,750
Appraiser misconduct reporting	625,000	.75	468,750	12,500,000	.375	78,125	546,875
Mortgage servicing [19]	5,000	1	5,000	1,000,000	2.25	37,500	42,500
Loan originators [20]	2,500	2	5,000	25,000	5	2,083	7,083
Total open-end credit							4,547,692
Total closed-end credit							8,460,760
Total credit							13,008,452

[1] Regulation Z requires disclosures for closed-end and open-end credit. TILA and Regulation Z now cover credit up to $54,600 plus an annual adjustment (except that real estate credit and private education loans are covered regardless of amount), generally causing an increase in transactions. In some instances noted below, market changes have reduced estimated PRA burden. In other instances noted below, changes to Regulation Z have increased estimated PRA burden. The overall effect of these competing factors, combined with the FTC sharing with the CFPB estimated PRA burden (for all but certain motor vehicle dealers) yields a net increase from the FTC's prior reported estimate for open-end credit and for closed-end credit.

[2] Burden per respondent in some categories has increased compared to prior FTC estimates, due to changes in rules.

[3] Burden per transaction in some categories has increased compared to prior FTC estimates, due to changes in rules.

[4] Respondents for mortgages involving rescission have decreased, as have transactions.

[5] Respondents for home equity lines of credit have decreased, as have transactions.

[6] Regulation Z high cost mortgage rules now cover certain open-end mortgages, and a new counseling rule also applies.

[7] Respondents for sale, transfer or assignment of mortgages have decreased.

[8] Regulation Z has expanded various mortgage servicing requirements for prompt crediting and payoff responses.

[9] Regulation Z includes new loan originator compensation requirements.

[10] Respondents for credit disclosures have decreased, as have transactions.

[11] Respondents for mortgages involving rescission have decreased.

[12] Regulation Z now has integrated mortgage disclosure requirements for loan estimates and loan closing documents, with other requirements.

[13] Respondents for variable rate mortgages have decreased but Regulation Z has expanded mortgage disclosure requirements affecting subsequent disclosures, increasing burden.

[14] Regulation Z high rate/high fee mortgages are now called high cost mortgages. Respondents in high cost mortgages have decreased, but the rules cover more types of mortgages and include a counseling requirement, increasing burden. However, these types of transactions have decreased, reducing total burden.

[15] Respondents for higher priced mortgages have decreased. However, Regulation Z now has certain appraisal requirements for higher-priced mortgages, increasing burden. However, these types of transactions have decreased, reducing total burden.

[16] Reverse mortgage respondents and transactions have decreased.

[17] Advertising respondents have increased, as have transactions, causing an increased total burden.

[18] Regulation Z now includes ability to pay rules that affect setup costs.

[19] Regulation Z has expanded various mortgage servicing requirements for prompt crediting and payoff responses. It also requires periodic statements (or a coupon book, for fixed-rate mortgages).

[20] Regulation Z includes new loan originator compensation requirements.

REGULATION Z—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($56/hr.)	Time (hours)	Cost ($42/hr.)	Time (hours)	Cost ($17/hr.)	
Recordkeeping	0	$0	68,885	$2,893,170	619,965	$10,539,405	$13,432,575
Open-end credit Disclosures:							
Initial terms	15,875	889,000	142,875	6,000,750	0	0	6,889,750
Rescission notices	78	4,368	705	29,610	0	0	33,978
Subsequent disclosures	20,333	1,138,648	183,000	7,686,000	0	0	8,824,648
Periodic statements	276,958	15,509,648	2,492,625	104,690,250	0	0	120,199,898
Error resolution	43,375	2,429,000	390,375	16,395,750	0	0	18,824,750
Credit and charge card accounts	9,688	474,712	87,187	2,615,610	0	0	3,090,322
Settlement of estate debts	4,000	196,000	36,000	1,080,000	0	0	1,276,000
Special credit card requirements	9,688	474,712	87,187	2,615,610	0	0	3,090,322
Home equity lines of credit	458	22,442	4,126	123,780	0	0	146,222
Home equity lines of credit-high cost mortgages	117	6,552	1,050	44,100	0	0	50,662
College student credit card marketing—ed institutions	229	11,221	2,063	61,890	0	0	73,111

REGULATION Z—RECORDKEEPING AND DISCLOSURES—COST—Continued

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($56/hr.)	Time (hours)	Cost ($42/hr.)	Time (hours)	Cost ($17/hr.)	
College student credit card marketing—card issuer reports	45	2,205	405	12,150	0	0	14,355
Posting and reporting of credit card agreements	9,688	474,712	87,187	2,615,610	0	0	3,090,322
Advertising	7,875	385,875	70,875	2,126,250	0	0	2,512,125
Sale, transfer, or assignment of mortgages	823	40,327	7,407	222,210	0	0	262,537
Appraiser misconduct reporting	54,687	2,679,663	492,188	14,765,640	0	0	17,445,303
Mortgage servicing	542	30,352	4,875	204,750	0	0	235,102
Loan originators	708	39,648	6,375	267,750	0	0	307,398
Total open-end credit							186,366,805
Closed-end credit Disclosures:							
Credit disclosures	639,960	35,837,760	5,759,637	241,904,754	0	0	277,742,514
Rescission notices	12,750	714,000	114,750	4,819,500	0	0	5,533,500
Redisclosures	13,750	770,000	123,750	5,197,500	0	0	5,967,500
Integrated mortgage disclosures	92,500	5,180,000	832,500	34,965,000	0	0	40,145,000
Variable rate mortgages	1,958	109,648	17,625	740,250	0	0	849,898
High cost mortgages	550	30,800	4,950	207,900	0	0	238,700
Higher priced mortgages	383	21,448	3,450	144,900	0	0	166,348
Reverse mortgages	433	24,248	3,900	163,800	0	0	188,048
Advertising	16,557	927,192	149,016	6,258,672	0	0	7,185,864
Private education loans	130	7,280	1,170	49,140	0	0	56,420
Sale, transfer, or assignment of mortgages	7,083	396,648	63,750	2,677,500	0	0	3,074,148
Ability to pay/qualified mortgage	375	21,000	3,375	141,750	0	0	162,750
Appraiser misconduct reporting	54,687	3,062,472	492,188	20,671,896	0	0	23,734,368
Mortgage servicing	4,250	238,000	38,250	1,606,500	0	0	1,844,500
Loan originators	708	39,648	6,375	267,750	0	0	307,398
Total closed-end credit							367,196,956
Total Disclosures							553,563,761
Total Recordkeeping and Disclosures							566,996,336

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are useful; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 1, 2015. Write ''Regs BEMZ, PRA Comments, P084812'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information . . . which is privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[18] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/RegsBEMZpra,* by following the instructions on the web-based form. When this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Regs BEMZ, PRA Comments, P084812'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade

[18] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), CFR 4.9(c), 16 CFR 4.9(c).

Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 1, 2015. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2015–07552 Filed 4–1–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Solicitation of Written Comments on Draft National Pain Strategy

SUMMARY: The National Institute of Neurological Disorders and Stroke (NINDS) Office of Pain Policy is soliciting public comment on the draft National Pain Strategy.

DATES: Comments on the draft National Pain Strategy must be received no later than 5 p.m. EST on May 20, 2015.

ADDRESSES: The draft National Pain Strategy is available at: *http://iprcc.nih.gov/docs/DraftHHSNationalPainStrategy.pdf.* Written comments sent electronically are preferred and may be addressed to *NPSPublicComments@NIH.gov.* Written responses should be addressed to Linda Porter, Ph.D., NINDS/NIH, 31 Center Drive, Room 8A31, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Contact Linda Porter, Ph.D., NINDS/NIH, 31 Center Drive, Room 8A31, Bethesda, MD 20892, *porterl@ninds.nih.gov.*

SUPPLEMENTARY INFORMATION: The draft National Pain Strategy reflects the work of many offices across the Department of Health and Human Services, Department of Defense, and Department of Veterans Affairs. The draft National Pain Strategy also reflects input from scientific and clinical experts and pain patient advocates. It includes objectives and plans related to key areas of pain and pain care, including professional education and training, public education and communication, service delivery and reimbursement, prevention and care, disparities, and population research.

I. Background

A core recommendation of the *2011 IOM Report: Relieving Pain in America* is: ''The Secretary of the Department of Health and Human Services should develop a comprehensive, population health-level strategy for pain prevention, treatment, management, education, reimbursement, and research that includes specific goals, actions, time frames, and resources.'' The IOM report highlighted specific objectives for the strategy:

- Describe how efforts across government agencies, including public-private partnerships, can be established, coordinated, and integrated to encourage population-focused research, education, communication, and community-wide approaches that can help reduce pain and its consequences and remediate disparities in the experience of pain among subgroups of Americans.
- Include an agenda for developing physiological, clinical, behavioral, psychological, outcomes, and health services research and appropriate links across these domains.
- Improve pain assessment and management programs within the service delivery and financing programs of the federal government.
- Proceed in cooperation with the Interagency Pain Research Coordinating Committee and the National Institutes of Health's Pain Consortium and reach out to private-sector participants as appropriate.
- Involve the appropriate agencies and entities.
- Include ongoing efforts to enhance public awareness about the nature of chronic pain and the role of self-care in its management.

The Department of Health and Human Services charged the Interagency Pain Research Coordinating Committee (IPRCC) with creating a comprehensive population health-level strategy to begin addressing these objectives.

II. Information Request

The NINDS Office of Pain Policy, on behalf of DHHS, requests input on the draft National Pain Strategy.

III. Potential Responders

HHS invites input from a broad range of individuals and organizations that have interests in advancing the fundamental understanding of pain and improving pain-related treatment strategies. Some examples of these organizations include, but are not limited to the following:

- Caregivers or health system providers (*e.g.,* physicians, physician assistants, nurses, pharmacists)
- Researchers
- Foundations
- Health care, professional, and educational organizations/societies
- Insurers and business groups
- Medicaid- and Medicare-related organizations
- Patients and their advocates
- Pharmaceutical Industry
- Public health organizations
- State and local public health agencies

When responding, please self-identify with any of the above or other categories (include all that apply) and your name. Anonymous submissions will not be considered. Written materials submitted for consideration should not exceed 5 pages, not including appendices and supplemental documents. Responders may submit other forms of electronic materials to demonstrate or exhibit concepts of their written responses. We request that comments be identified by section, subsection, and page number of the draft so they may be addressed accordingly. All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Dated: March 25, 2015.

Walter J. Koroshetz,

Acting Director, National Institute of Neurological Disorders and Stroke, National Institutes of Health.

[FR Doc. 2015–07626 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Biomedical Engineering Society and FDA Frontiers in Medical Devices: Innovations in Modeling and Simulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of Public Conference

The Food and Drug Administration (FDA) in co-sponsorship with the

Biomedical Engineering Society (BMES) is announcing a public conference entitled ''Frontiers in Medical Devices: Innovations in Modeling and Simulation''. The purpose of this conference is to provide a forum to discuss strategies to effectively utilize computational modeling and simulation in the development and evaluation of medical devices.

Date and Time: The conference will be held on May 18 through 20, 2015, from 8 a.m. to 6 p.m.

Location: The public conference will be held at the Marriott Inn and Conference Center, University of Maryland, 3501 University Blvd. East, Hyattsville, MD 20783.

Contact Person: Donna R. Lochner, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, Rm. 3220, Silver Spring, MD 20993, 301–796–6309, *Donna.Lochner@fda.hhs.gov.*

Registration: To register for the public conference please visit FDA's Medical Devices News, Events, Workshops, and Conferences calendar at *http://www.bmes.org/meddevicesconference.* There is a registration fee to attend the public conference to cover the expenses, and attendees must register in advance. The fees vary depending upon membership status in BMES, and include BMES members ($450), non-BMES members (includes 1 year BMES membership) ($600), and Government rate (BMES memberships and meals are not included) ($250). Students will be offered a discounted fee of $300 (BMES member) or $350 (non-BMES member) (includes 1 year BMES membership). A full listing of the registration fees can be found on the Web site listed. Although the facilities are spacious, registration will be on a first-come, first-served basis.

If you need special accommodations due to a disability, please contact Betse Lyons at *Betse@bmes.org* or 301–459–1999, 8201 Corporate Drive, Suite 1125, Landover, MD 20785–2224, FAX: 301–459–2444, no later than May 4, 2015.

To register for the public conference, please visit BMES Frontiers in Medical Devices registration page at *http://bmes.org/meddevicesregistration.* Those without Internet access should contact Betse Lyons at 301–459–1999 to register.

SUPPLEMENTARY INFORMATION:

I. Background

The Center for Devices and Radiological Health (CDRH) believes that computer modeling and simulation (M&S) has the potential to substantially augment traditional models used to evaluate medical devices; *i.e.,* animal, bench, and human models, and to accelerate and streamline the total product life cycle of a medical device. The use of computer models to simulate multiple use conditions and to visualize and display complex processes and data can revolutionize the way medical outcomes and medical devices are understood. Non-proprietary computer models could benchmark device performance, yet lack of access to biomedical data to construct the models and rigorous methods to validate the models limit their credibility and use. To foster good science for M&S in the medical device community, CDRH needs to leverage the expertise in industry and academia to advance M&S for regulatory uses.

II. Topics for Discussion at the Public Workshop

A large number of issues will be discussed at the conference with the overall theme being the application of modeling and simulation for medical devices at different stages in the total product life cycle. Topics include, but are not limited to the following:

- Model foundations for device design ideation;
- concept development and design optimization;
- modeling for robust design;
- design verification and validation;
- patient specific design;
- integration of modeling with clinical studies;
- modeling and device commercialization.

This public workshop may also form the basis for future discussions related to computer modeling and simulation that could benefit U.S. public health.

Dated: March 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07551 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Mentoring Programs for HIV/AIDS Researchers 2.

Date: March 30, 2015.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: March 27, 2015.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–07507 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0481]

Agency Information Collection Activities; Proposed Collection; Comment Request; New Animal Drugs for Investigational Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on

the reporting and recordkeeping requirements for ''New Animal Drugs for Investigational Uses''.

DATES: Submit either electronic or written comments on the collection of information by June 1, 2015.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the 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: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

New Animal Drugs for Investigational Uses—21 CFR Part 511 (OMB Control Number 0910–0117)—(Extension)

FDA has the authority under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to approve new animal drugs. Section 512(j) of the Act (21 U.S.C. 360b(j)), authorizes FDA to issue regulations relating to the investigational use of new animal drugs. The regulations setting forth the conditions for investigational use of new animal drugs have been codified at 21 CFR part 511. If the new animal drug is only for tests in vitro or in laboratory research animals, the person distributing the new animal drug must maintain records showing the name and post office address of the expert or expert organization to whom it is shipped and the date, quantity, and batch or code mark of each shipment and delivery for a period of 2 years after such shipment or delivery. Before shipping a new animal drug for clinical investigations in animals, a sponsor must submit to FDA a Notice of Claimed Investigational Exemption (NCIE). The NCIE must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any non-clinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5) the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6) information regarding the use of edible tissues from investigational animals. Part 511 also requires that records be established and maintained to document the distribution and use of the investigational new animal drug to assure that its use is safe and that the distribution is controlled to prevent potential abuse. The Agency uses these required records under its Bio-Research Monitoring Program to monitor the validity of the studies submitted to FDA to support new animal drug approval and to assure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are used primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities, as well as research firms and members of the medical professions. Respondents to this collection of information are the persons who use new animal drugs for investigational purposes.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
511.1(b)(4)	263	5.30	1,395	1	1,395
511.1(b)(5)	263	.26	69	8	552
511.1(b)(6)	263	.01	2	1	2
511.1(b)(8)(ii)	263	.06	15	2	30
511.1(b)(9)	263	.06	15	8	120
Total					2,099

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
511.1(a)(3)	263	2.07	545	1	545
511.1(b)(3)	263	5.30	1,395	1	1,395
511.1(b)(7)(ii)	263	5.30	1,395	3.5	4,882.5

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
511.1(b)(8)(i)	263	5.30	1,395	3.5	4,882.5
Total					11,705

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for reporting requirements, record preparation, and maintenance for this collection of information is based on informal Agency communication with industry. Based on the number of sponsors subject to animal drug user fees, FDA estimates that there are 263 respondents. We use this estimate consistently throughout the table and calculate the ''annual frequency per respondent'' by dividing the total annual responses by number of respondents. Additional information needed to make a final calculation of the total burden hours (*i.e.,* the number of respondents, the number of recordkeepers, the number of NCIEs received, etc.) is derived from Agency records.

Dated: March 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07539 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Evaluation of a Stepped Care Approach for Perinatal Depression Treatment in Obstetrics and Gynecology Clinics, DP15–005, initial review.

SUMMARY: This document corrects a notice that was published in the **Federal Register** on March 12, 2015 Volume 80, Number 48, page 13012. The time and date should read as follows:

Time and Date: 11:00 a.m.–6:00 p.m., April 1, 2015 (Closed).

FOR FURTHER INFORMATION CONTACT: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F46, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–07545 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Using Longitudinal Data to Characterize the Natural History of Fragile X Syndrome to Improve Services and Outcomes, DD15–003, initial review.

SUMMARY: This document corrects a notice that was published in the **Federal Register** on March 25, 2015 Volume 80, Number 57, page 15798. The time and date should read as follows:

Time and Date: 11:00 a.m.–6:00 p.m., April 15, 2015 (Closed).

FOR FURTHER INFORMATION CONTACT: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F46, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–07544 Filed 4–1–15; 8:45 am]

BILLING CODE 4163–18–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 June 1, 2015.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10C–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting

information, please include the information request collection title for reference.

Information Collection Request Title: Faculty Loan Repayment Program OMB No. 0915–0150, Revision.

Abstract: Under the HRSA Faculty Loan Repayment Program, degree-trained health professionals from disadvantaged health backgrounds may enter into a contract under which the Department of Health and Human Services will make payments on eligible educational loans in exchange for a minimum of 2 years of service as a full-time or part-time faculty member of an accredited health professions college or university.

Need and Proposed Use of the Information: The Faculty Loan Repayment Program needs to collect data to determine an applicant's eligibility for the program. Information is collected from the applicants and/or the educational institutions which includes general applicant data, applicant educational loan history, employment status, and information regarding the educational institution which employs the applicant.

Likely Respondents: Faculty Loan Repayment Program applicants and institutions providing employment to the applicants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this 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
Eligible Applications	111	1	111	1	111
Institution/Loan Repayment Employment Form	*111	*1	111	1	111
Authorization to Release Information Form	111	1	111	.25	27.83
Total	222				249.83

*Respondent for this form is the institution for the applicant.

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. 2015–07577 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Electronic Prior Approval Submission System (ePASS) (NHLBI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 24, 2014 (79 FR 69865), and allowed 60-days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Ryan Lombardi, 6701 Rockledge, Office of Grants Management, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Dr, MSC 7926, Bethesda, MD 20892–7926, or call non-toll-free number 301–435–0166, or Email your request, including your address to *lombardr@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Electronic Prior Approval Submission System (ePASS), 0925—New, National Heart Lung and Blood Institute (NHLBI), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose and use of the information collection for this project is to collect and track certain requests (such as budget modifications or undertaking particular activities) from NIH grantees in an electronic format. This new electronic system, ePASS (electronic Prior Approval Submission System), will enable grantees to have a standard way to submit requests for their projects per NIH policy. The grantee will initiate a request for a certain action as required by NIH policy: Use of unobligated balances/carryover, change of PI, change of effort, Training

Grant (NRSA) waivers, significant rebudgeting, 2nd and 3rd no cost extensions, and change of scope. These are all prior approvals as required by the NIH Grants Policy, and need to be reviewed and approved by the NHLBI. ePASS will provide a template to ensure that all specific points are addressed and documented in the official grant file. All information is submitted via the internet, tracked in ePASS, and the documentation will automatically be forwarded to the official grant file. The system will ensure that individuals authorized by the grantee are submitting requests and that the appropriate NIH staff is receiving the requests. The requests will be template driven so that the grantee is including the minimally required information, thus eliminating the usual back and forth to obtain missing information. Forms will have automatic fill-in capability that will reduce typos in grant numbers and PI names, further reducing approval time. Reminders will be sent to NIH staff within ePASS based on roles to ensure timely responses to the grantee. The system will facilitate email communication with applicants by automatic notifications when applications are received and when NIH has made a determination regarding a request (approval issued or request denied with explanation for denial).

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 470.

ESTIMATES OF HOUR BURDEN

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual hour burden
NHLBI Grantees	940	1	30/60	470
Totals	940			470

Dated: March 17, 2015.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2015–07623 Filed 4–1–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

Time and Date: 11:00 a.m.–5:00 p.m., Eastern Standard Time, April 28, 2015.

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number, 1–866–659–0537 and the passcode is 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2015.

Purpose: The ABRWH is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, providing advice to the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

Matters for Discussion: The agenda for the Subcommittee meeting includes: discussion of procedures in the following ORAU and DCAS technical documents: Procedures for reconstructing dose associated with potential skin contamination, ORAU Team Technical Information Bulletin (OTIB) 0034 (''Internal Dose Coworker Data for X–10''), OTIB 0054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses''), OTIB 0082 (''Dose Reconstruction Method for Chronic Lymphocytic Leukemia''), Update on Review of ORAU Team Report 0053 (''Stratified Co-Worker Sets''); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

Contact Person For More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., Mailstop E–20, Atlanta Georgia 30333, Telephone (513) 533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–07542 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 8:30 a.m.–3:00 p.m., EDT, April 23, 2015.

Place: CDC, Building 19, Auditorium B3, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space and phone lines available. The meeting room accommodates approximately 50 people. Advance registration for in-person participation is required by April 16, 2015. The public is welcome to participate during the public comment period, which is tentatively scheduled from 2:35 p.m. to 2:40 p.m. This meeting will also be available by teleconference. Please dial (877) 930–8819 and enter code 1579739.

Web links: Windows Media: *http://wm.onlinevideoservice.com/CDC1*.

Flash: *http://www.onlinevideoservice.com/clients/CDC/?mount=CDC3*.

If you are unable to connect using the link, copy and paste the link into your web browser. For technical support please call: (404) 639–3737.

Purpose: The Advisory Committee to the Director, CDC, shall advise the Secretary, HHS, and the Director, CDC, on policy and broad strategies that will enable CDC to fulfill its mission of protecting health through health promotion, prevention, and preparedness. The committee recommends ways to prioritize CDC's activities, improve results, and address health disparities. It also provides guidance to help CDC work more effectively with its various private and public sector constituents to make health protection a practical reality.

Matters for Discussion: The Advisory Committee to the Director will receive updates from the State, Tribal, Local and Territorial Subcommittee; the Health Disparities Subcommittee, the Global Workgroup, the Internal and External Laboratory Safety Workgroups, and the Public Health—Health Care Collaboration Workgroup, the Ebola response, global health security, recent viral outbreaks, antimicrobial resistance, as well as an update from the CDC Director.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Carmen Villar, MSW, Designated Federal Officer, ACD, CDC, 1600 Clifton Road NE., M/S D–14, Atlanta, Georgia 30333. Telephone (404) 639–7158, Email: *GHickman@cdc.gov*. The deadline to register for in-person attendance at this meeting is April 16, 2015. To register, please send an email to *GHickman@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2015–07543 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10549]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *May 4, 2015:*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_s submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

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. The term ''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 publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Generic Clearance for Questionnaire Testing and Methodological Research for the Medicare Current Beneficiary Survey (MCBS); Use: The purpose of this OMB clearance package is to clear a Generic Clearance to support an effort to evaluate the operations and content of the Medicare Current Beneficiary Survey (MCBS). The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged, disabled, and institutionalized Medicare beneficiaries. The MCBS, which is sponsored by the Centers for Medicare & Medicaid Services (CMS), is the only comprehensive source of information on the health status, health care use and expenditures, health insurance coverage, and socioeconomic and demographic characteristics of the entire spectrum of Medicare beneficiaries.

The core of the MCBS is a series of interviews with a stratified random sample of the Medicare population, including aged and disabled enrollees, residing in the community or in institutions. Questions are asked about enrollees' patterns of health care use, charges, insurance coverage, and payments over time. Respondents are asked about their sources of health care coverage and payment, their demographic characteristics, their health and work history, and their family living circumstances. In addition to collecting information through the core questionnaire, the MCBS collects information on special topics through supplements. For example, questions are asked about enrollees' income and assets, access to health care, health and functional status and satisfaction with care. Special supplements also focus on emerging trends in health care. *Form Number:* CMS–10549 (OMB control number 0938–New); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours:* 1,117. (For policy questions regarding this collection contact William Long at 410–786–7927.)

Dated: March 26, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–07322 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Availability: Test Tools and Test Procedures Approved by the National Coordinator for the ONC HIT Certification Program

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the availability of test tools and test procedures approved by the National Coordinator for Health Information Technology (the National Coordinator) for the testing of EHR technology to two 2014 Edition Release 2 EHR certification criteria under the ONC HIT Certification Program. The approved test tools and test procedures for the ''optional—transitions of care'' certification criterion (§ 170.314(b)(8)) and the revised ''view, download, and transmit to 3rd party'' certification criterion (§ 170.314(e)(1)) are identified on the ONC Web site at: *http://healthit.gov/policy-researchers-implementers/testing-and-test-methods.* The test tools and test procedures for all the other 2014 Edition Release 2 EHR certification criteria were previously approved by the National Coordinator.

FOR FURTHER INFORMATION CONTACT: Alicia Morton, Director, Office of Certification, Office of the National Coordinator for Health Information Technology, 202–549–7851.

SUPPLEMENTARY INFORMATION: On January 7, 2011, the Department of Health and Human Services issued a final rule establishing a permanent certification program for the purposes of testing and certifying health information technology (''Establishment of the Permanent Certification Program for Health Information Technology,'' 76 FR 1262) (Permanent Certification Program final rule). The permanent certification program was renamed the ''ONC HIT Certification Program'' in a final rule published on September 4, 2012 (77 FR 54163) (''2014 Edition EHR Certification Criteria final rule''). In the preamble of the Permanent Certification Program final rule, we stated that when the National Coordinator had approved test tools and test procedures for certification criteria adopted by the Secretary ONC would publish a notice of availability in the **Federal Register** and identify the approved test tools and test procedures on the ONC Web site.

In the 2014 Edition Release 2 EHR Certification Criteria final rule the Secretary adopted additional and revised certification criteria as part of the 2014 Edition EHR certification criteria (79 FR 54430). The National Coordinator has approved test tools and test procedures for testing EHR technology for two 2014 Edition Release 2 EHR certification criteria under the ONC HIT Certification Program. These approved test tools and test procedures for the ''optional—transitions of care'' certification criterion (§ 170.314(b)(8)) and the revised ''view, download, and transmit to 3rd party'' certification criterion (§ 170.314(e)(1)) are identified on the ONC Web site at: *http://healthit.gov/policy-researchers-implementers/testing-and-test-methods.* The test tools and test procedures for all the other 2014 Edition Release 2 EHR certification criteria were previously approved by the National Coordinator (80 FR 4577) and are available for review at the Web site listed above.

Authority: 42 U.S.C. 300jj–11.

Dated: March 20, 2015.

Lisa Lewis,

Acting National Coordinator for Health Information Technology

[FR Doc. 2015–07572 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Council for the Elimination of Tuberculosis, Department of Health and Human Services, has been renewed for a 2-year period through March 15, 2017.

For information, contact Hazel Dean, Sc.D., M.P.H., Designated Federal Officer, Advisory Council for the

Elimination of Tuberculosis, Department of Health and Human Services, 1600 Clifton Road NE., Mailstop E–10, Atlanta, Georgia 30333, telephone 404/639–8000 or fax 404/639–8600.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–07541 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0045]

Abuse-Deterrent Opioids—Evaluation and Labeling; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Abuse-Deterrent Opioids—Evaluation and Labeling''. This guidance explains FDA's current thinking about the studies that should be conducted to demonstrate that a given formulation has abuse-deterrent properties. This guidance also makes recommendations about how those studies should be performed and evaluated, and discusses how to describe those studies and their implications in product labeling. It is intended to assist sponsors who wish to develop opioid drug products with potentially abuse-deterrent properties and is not intended to apply to products that are not opioids or opioid products that do not have the potential for abuse.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brutrinia D. Cain, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4633, *Brutrinia.Cain@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Abuse-Deterrent Opioids—Evaluation and Labeling.'' Prescription opioid products are an important component of modern pain management. However, abuse and misuse of these products have created a serious and growing public health problem. One potentially important step towards the goal of creating safer opioid analgesics has been the development of opioids that are formulated with some properties intended to deter abuse. FDA considers development of these products a high public health priority.

The guidance is intended to provide industry with a framework for evaluating and labeling abuse-deterrent opioid products. The guidance discusses how the potentially abuse-deterrent properties of an opioid analgesic formulated to deter abuse should be studied, specifically addressing in vitro studies, pharmacokinetic studies, clinical abuse potential studies, and postmarket studies. The guidance also describes the types of information that may be suitable for inclusion in labeling.

Providing a clear framework for the evaluation and labeling of the abuse-deterrent properties of opioid analgesics intended to deter abuse should help to incentivize the development of safer, less abusable opioid analgesics, and should also facilitate the dissemination of fair and accurate information regarding such products.

In the **Federal Register** of January 14, 2013 (78 FR 2676), FDA announced the availability of a draft version of this guidance and provided interested parties an opportunity to submit comments. The Agency has carefully reviewed and considered the comments it received in developing this final version of the guidance. The Agency has made revisions to the guidance as it deemed appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the evaluation and labeling of abuse-deterrent opioids. 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. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: March 27, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07562 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0005]

Agency Information Collection Activities: Application for Family Unity Benefits, Form I–817; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: 60-Day notice.

SUMMARY: DHS, USCIS invites the general public and other Federal agencies to comment upon this proposed revision of a currently

approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 1, 2015.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0005 in the subject box, the agency name and Docket ID USCIS–2009–0021. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2009–0021;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments: You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0021 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–817; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households: The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–817 is approximately 2,557 and the estimated hour burden per response is 2 hours per response; and the estimated number of respondents providing biometrics is 2,557 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 8,106 hours.

Dated: March 27, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–07506 Filed 4–1–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5843–N–04]

Implementation of the Privacy Act of 1974, as Amended; New System of Records, the Housing Search Process for Racial and Ethnic Minorities Evaluation Data Files

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: New system of records.

SUMMARY: The Department's Office of Policy Development and Research (PD&R) is proposing to create a new system of records, the ''Housing Search Process for Racial and Ethnic Minorities Evaluation Data Files.'' The Department's Office of PD&R is responsible for maintaining current information on housing needs, market conditions and existing programs, as well as conducting research on priority housing and community development issues.

The principal purpose of the evaluation of the Housing Search Process for Racial and Ethnic Minorities is to: Help guide the Department's research toward a more comprehensive understanding of the rental housing search processes for individual households; Make informed decisions on the development of more effective enforcement strategies to combat discriminatory practices; Identify ways to expand housing opportunities for racial and ethnic minorities. Further, HUD's Office of Housing Counseling for rental housing assistance, and the Office of Housing Choice Vouchers, among others will leverage the outcome study results for policy development and best practices aimed to ''build inclusive and sustainable communities free from discrimination'', and to identify and correct barriers that racial and ethnic minorities may experiences in the rental housing market. Finally, this study will allow the Department to leverage its own regular data collection efforts, like

the American Housing Survey (AHS), to document the complexities of the housing search process at scale nationwide. A more detailed description of this system is contained in the ''Purpose'' caption of this system of records notice.

DATES: *Effective Date:* The notice will be effective May 4, 2015, unless comments are received that would result in a contrary determination.

Comments Due Date: May 4, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. [The above telephone number is not a toll free number.] A telecommunications device for hearing- and speech-impaired persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: This system of records will be operated by HUD's Office of PD&R and will include personally identifiable information (PII) of participants in the Housing Search Process for Racial and Ethnic Minorities that will be retrieved from the system by a name or unique identifier. The new system of records will encompass information on program and services administered by the Department. Publication of this notice allows the Department to satisfy its reporting requirement and keep an up-to-date accounting of its system of records publications. The new system of records will incorporate Federal privacy requirements and the Department's policy requirements. The Privacy Act provides individuals with certain safeguards against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure, by ensuring that information is current and collected only for its intended use, and by providing adequate safeguards to prevent misuse of such information. Additionally, this notice demonstrates the Department's focus on industry best practices to protect the personal privacy of the individuals covered by this system of records notice.

This notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for the records, the routine uses made of the records and the type of exemptions in place for the records. In addition, this notice includes the business addresses of Department officials' who will inform interested persons of the procedures whereby they may gain access to and/or request amendments to records pertaining to them.

This publication does meet the SORN threshold requirements pursuant to the Privacy Act and OMB Circular A–130, and a report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform as instructed by Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: March 27, 2015.

Rafael C. Diaz,

Chief Information Officer.

SYSTEM OF RECORDS NO.:

PD&R/RRE.04

SYSTEM NAME:

Housing Search Process for Racial and Ethnic Minorities Evaluation Data Files.

SYSTEM LOCATION:

The Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20140; The Urban Institute, 2100 M Street NW., Washington, DC 20037; The SSRS, 53 West Baltimore Pike Media, PA 19063.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system will include records on participants in the Housing Search Process for Racial and Ethnic Minorities who have agreed to be part of the outcome study.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system will include the participants name, home address, telephone number, and personal email address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for the collection of records, and the maintenance of this system is authorized by Sections 501–502 of the Housing and Urban Development Act of 1970 (Public Law 91–609), 12 U.S.C. 1701z–1, 1701z–2 and Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988 (42 U.S.C. 3601.)

PURPOSE(S):

The purpose of the evaluation of the Housing Search Process for Racial and Ethnic Minorities is to allow the Department to address Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), which prohibits discrimination in the rental market based on race and/or ethnicity and charges HUD to study the nature and extent of these discriminations. It is suspected that the differences between the rental housing search process employed by racial and/or ethnic minorities and other populations may have significant consequences for the housing opportunities available to minority households and the strategies needed to combat racial and ethnic discrimination. HUD fulfills its obligations under this study by using multiple methods, including its flagship paired-testing studies to leverage search criteria gained from individuals during their rental housing search process. In the past, vigorous experiments have shown that people of different racial and/or ethnic groups are treated differently by landlords and real estate agents. This study will help the Department gain an understanding of the racial and ethnic differences experienced by individuals during the housing search process and will identify the important factors needed to address a common critique under the existing studies. National HUD-funded studies of housing discrimination routinely measure their results assuming a common search pattern defined by the testing protocols executed by both the minority and the nonminority testers. As a result, the Department is unable to understand whether these stages of the process capture the audit studies mapped to what people actually do when they search for rental housing. For example, in a housing search, an individual interacts with a landlord in the way that the audit studies capture. However, the interaction may not come about in the manner assumed by an audit study methodology (*i.e.* finding a listing on the internet or in the newspaper). The Department is also unaware of how the searcher decided to inquire about the unit, what factors shaped that decision, how the searcher interprets the

interaction with the landlord, and how this interaction shapes the searcher's subsequent housing search decisions. In other words, though the Department may know a great deal about what happens in terms of race and ethnicity at the point of the interaction between a prospective tenant and landlord, it knows very little about what precedes or follows that interaction, and how these factors ultimately affect housing outcomes.

The research team plans to implement two original data collection activities designed specifically to begin fleshing out a more detailed conceptual framework for the housing search process by: (1) Exploring dimensions completely absent in existing survey data, (2) gathering information at different time points during active housing searches—a technique yet untested—and (3) engaging only respondents who are currently searching or have moved in the past two months to improve upon the often nebulous reporting windows of the existing survey data. For example, the AHS asks respondents to report on their search behavior and priorities up to 24 months after the search is complete. On the other hand, even though the Chicago Area Study (CAS), provides the most detailed information about search processes, it still asks respondents to recall searches happening as much as 10 years after the search.

There are two exploratory data collection activities:

1. The Housing Search Study (HSS) will consist of 525 half-hour, one-time phone cognitive testing interviews with diverse respondents who have moved into a rental property within the last two months. In addition, the HSS will follow 175 people actively engaged in a search for a rental property over a period of up to 28 days. The number of cognitive testing interviews for current searchers will depend on the status of each respondent's housing search. All respondents will participate in an initial interview at time 1 (to last 30 minutes) and will receive a follow-up call two weekends later at time 2 (to last 20 minutes). Only respondents who are still actively searching at time 2 will receive a follow-up call at time 3 (also to last 20 minutes). Cognitive tests with current searchers are designed to map the iterative and dynamic qualities of housing search.

2. In-depth interviews will consist of one-time, 1-hour long in-person conversations with 48 respondents identified through the first two original data collection efforts to explore the narratives surrounding the most salient racial/ethnic differences in the housing search process and outcomes that emerge from early analyses of data from the cognitive tests.

The goal of the original data collection activities is not to estimate the prevalence of racial and/or ethnic differences in the housing search, but rather to develop a nuanced understanding of the process and identify potential drivers of racial and/or ethnic differences in order to inform the design of future fair-housing testing methodologies for potential points of intervention for HUD programs. All original data collection activities will be conducted in the Washington DC metropolitan area. Those who agree to participate in the study will have an opportunity to receive up to 200 dollars, depending on their level of participation in the study. In-depth interview respondents will be recruited from those who participate in the shorter, earlier interviews. The research team will analyze existing datasets including the Panel Study of Income Dynamics (PSID), the AHS, and the CAS. This analysis will leverage these surveys' strong sampling design to provide estimates of prevalence as well as statistically valid tests of racial and/or ethnic differences in the population for the very limited number of housing search related variables.

PURPOSE OF THE DATA COLLECTION:

This submission requests approval for original data collection tasks 1 and 2—the HSS and the in-depth interviews will be merged with other planned analyses of secondary data to provide large-scale, nuanced information to address the task order research questions as articulated in the RFP:

- What are the primary ways that racial and ethnic minorities search for rental housing?
- To what extent are these patterns different from the housing search patterns of whites?
- What parts of these search patterns would be easy to document?
- What parts would be hard to document?
- What can be clearly demonstrated or inferred about the consequences of these differences for relative housing opportunities?
- What can be clearly demonstrated or inferred about the consequences of these differences about the ability to test for enforcement purposes?
- What can be clearly demonstrated or inferred about the consequences of these differences about appropriate educational programs?
- What are the most promising areas for further research, both on substantive importance grounds and feasibility of available research strategies?

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside HUD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To Urban Institute staff to track study participants and locate participants for a future follow-up interview. Staff may also use the data files to match with other datasets for tracking purposes, such as change of address and credit bureau databases;

2. To appropriate agencies, entities, and persons to the extent that such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I [1]—HUD's Library of Routine Uses published in the **Federal Register** (July 17, 2012, at 77 FR 41996); and

3. To appropriate agencies, entities, and persons when: a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; b) HUD has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All data collected will be input and stored in a secure database. Hard-copy materials containing respondent identifying information will be locked up when not in use. PII will be accessible to the research team only at the Urban Institute and SSRS system locations. PII will be accessible by the Urban Institute and the file will not be

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=append1.pdf.*

shared or accessed by HUD. All hard-copy materials, including completed forms and electronic records on transportable media, will be kept in locked cabinets when not in use. In addition, data on transportable media will be encrypted. Records with PII will not be printed. Records and the file will be destroyed by the Urban Institute at the completion of the study.

RETRIEVABILITY:

Records within the contact database will be retrieved by name, home address, telephone number, and personal email address.

RETENTION AND DISPOSAL:

The retention and disposal procedures will be in keeping with HUD's records management statutory obligations as described in 44 U.S.C. 3101 and 3303. Records will be maintained for a period not to exceed five years. All PII associated with the project will be destroyed by Urban Institute and their subcontractors or otherwise rendered irrecoverable per NIST Special Publication 800–88 ''Guidelines for Media Sanitization'' (September 2006) at the end of the contract.

At the end of the contract, paper-based records that do not need to be retained will be shredded and the remainder of the files will be shredded after the three-year retention period required in the contract.

SAFEGUARDS:

Access to any server, security, storage, backup, and infrastructure equipment is monitored, restricted to only those with a need-to-have system access, including being secured by administrative password and authentication methods. All system users are required to sign a confidentiality pledge to abide by corporate policies and by HUD policies. There are no paper-based records associated with this study.

SYSTEM MANAGER(S) AND ADDRESS:

Carol Star, Director, Division of Program Evaluation, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone Number (202) 402–6139.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiries about the existence of records, contact Donna Robinson-Staton, Chief Privacy Officer, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. Verification of your identity must include original signature and be notarized. Written request must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR, Part 16. Additional assistance may be obtained by contacting: Donna Robinson-Staton, Chief Privacy Officer, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073; or the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410.

RECORD SOURCE CATEGORIES:

The individual study participants in the surveys will be recruited through a variety of neighborhood-level organizations, requesting voluntary participation. The data will be gathered from and supplied by a limited number of in-depth interviews of some members of the testing group, and the study participants: including recent movers and current housing searchers in large scale cognitive testing.

The varied methods, designed to reach out to diverse populations, include:

- Media and advertising—A display of promotional posters about the study on buses in District of Columbia, flyers, emails, and Facebook posting.
- Online presence—Web page hosted for the study that explains its purpose, incentives, the organization implementing the study, and that provides instructions for participation.
- Community partnerships—A partnership to be establish with a variety of different private and nonprofit organizations, including rental assistance housing counseling agencies, community organizations, and businesses to help promote the study among their constituents.
- Snowball sampling—Referrals of respondents of cognitive testing who may be eligible.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2015–07610 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5843–N–05]

Implementation of the Privacy Act of 1974, as Amended; New System of Records, Rent Reform Demonstration

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: New System of Records.

SUMMARY: The Department's Office of Policy Development and Research (PD&R) is proposing to create a new system of records (SORN), the ''Rent Reform Demonstration.'' The Department's Office of PD&R is responsible for maintaining current information on housing needs, market conditions and existing programs, as well as conducting research on priority housing and community development issues. The Rent Reform Demonstration is a randomized controlled experiment designed to test, at the national level an evaluation of alternative solutions designed to improve the current rent subsidy model. The demonstration is being implemented at several ''Moving to Work'' (MTW) public housing agencies (PHAs) in different parts of the country. Pursuant to the federal law authorizing MTW, Congress gave local public housing agencies the opportunity to design and test innovative policies to improve the current rent subsidy system. All MTW public housing agencies have the authority to institute new policies system-wide. The Rent Reform Demonstration gives participating MTW public housing agencies the opportunity to adopt new policies on a trial basis and to learn from a careful evaluation whether they achieve benefits for tenants and the housing agency.

The overall objective of the Rent Reform Demonstration is to compare the current rent structure of the Housing Choice Voucher (HCV) program to the alternate rent structure's to examine the impact on household employment, earnings, hardship, health, and homelessness; gain knowledge and comprehension on the impact that the alternative rent system has on HCV program families; and to identify ways to simplify and make less expensive the PHA's administrative processes. A more detailed description of the new system of records is outlined in the ''Purpose'' caption of this system of records notice.

DATES: *Effective Date:* The notice will be effective May 4, 2015, unless comments are received that would result in a contrary determination.

Comments Due Date: May 4, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. [The above telephone number is not a toll free number.] A telecommunications device for hearing-and speech-impaired persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: This system of records will be operated by HUD's Office of PD&R and will include personally identifiable information (PII) pertaining to participants of the Rent Reform Demonstration that will be retrieved from the system by a name or unique identifier. The new system of records will encompass information on program and services administered by the Department. Publication of this notice allows the Department to satisfy its reporting requirement and keep an up-to-date accounting of its system of records publications. The new system of records will incorporate Federal privacy requirements and Department's policy requirements. The Privacy Act provides individuals with certain safeguards against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure, by ensuring that information is current and collected only for its intended use, and by providing adequate safeguards to prevent misuse of such information. Additionally, this notice demonstrates the Department's focus on industry best practices to protect the personal privacy of the individuals covered by this system of records notice.

This notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for the records, the routine uses made of the records and the type of exemptions in place for the records. In addition, this notice includes the business addresses of Department officials' who will inform interested persons of the procedures whereby they may gain access to and/or request amendments to records pertaining to them.

This publication does meet the SORN threshold requirements pursuant to the Privacy Act and OMB Circular A–130, and a report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform as instructed by Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: March 27, 2015.

Rafael C. Diaz,

Chief Information Officer.

SYSTEM OF RECORDS NO.:

PD&R/RRE.05

SYSTEM NAME:

Rent Reform Demonstration.

SYSTEM LOCATION:

The Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20140; MDRC, 16 East 34 Street, 19th Floor, New York, NY 10016 and MDRC, 475 14th Street, Suite 750, Oakland, CA 94612–1900; eVault, 14944 Pony Express Road, Bluffdale, Utah 84065; Branch Associates, Inc., 1628 JFK Boulevard, Suite 800, 8 Penn Center, Philadelphia, PA 19103; Bronner Group, 120 N La Salle Street, Room 1300, Chicago, IL 60602; Quadel Consulting Corporation, 1200 G Street NW., Suite 700, Washington, DC 20005; Urban Institute, 2100 M Street NW., Washington, DC 20037; and Ingrid Gould Ellen, New York University, Robert F. Wagner Graduate School of Public Service, 295 Lafayette Street, New York, NY 10012. The storage and archival facility for the Rent Reform Demonstration data files is located at Datacenter/Windstream, 15 Shattuck Road Andover, MA 01810.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system will include all household members enrolled in the Rent Reform Demonstration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system will include the participants name, home address, telephone numbers, personal email address, Social Security Number, date of birth, marital status, citizenship status, rental housing assistance status and history, date of birth and relationship code for minors, Supplemental Nutrition Assistance Program (SNAP) status, Temporary Assistance for Needy Families (TANF) status, income, savings level, debt level, educational attainment, employment status, childcare costs, health insurance status, and employment impediments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for the collection of records, and the maintenance of this system is authorized by Sections 501–502 of the Housing and Urban Development Act of 1970 (Pub. L. 91–609), 12 U.S.C. 1701z–1, 1701z–2.

PURPOSE(S):

The purpose of the Rent Reform Demonstration SORN is to allow the Department to collect, track, and study information gathered on HCV program participants, and to analyze the overall effectiveness of existing programs and policies to examine the impact on HCV program families. In order to study the sample of up to 9,000 families participating in the Demonstration, it is necessary to collect their contact information and other personal identifying information with their consent so that the Department can match study participants with various forms of administrative data for the purpose of conducting statistical analysis and presenting aggregate analysis of impacts of the alternative rent model on the study sample. In addition, the records collected through this evaluation represent HUD's effort to assess and report to Congress on the performance and impact of this Demonstration. The Department is conducting this study under contract with MDRC and its subcontractors (Branch Associates, The Bronner Group, Quadel Consulting Corporation, and the Urban Institute). The intent of the demonstration is to gain a comprehensive understanding of the impact that the alternative rent system has on families, as well as understand the administrative burden on Public Housing Agencies (PHAs). The Rent Reform Demonstration will rely on multiple data sources. The evaluation will include a careful assessment of the implementation, impacts, and cost of the new policy already developed by four PHAs in different parts of the country. The project is a random assignment trial of an alternative rent system. Families will be randomly

assigned to either participate in the new/alternative rent system or to continue in the current system. PHAs currently participating in the MTW Demonstration are being recruited to participate in this demonstration. Data collection will include the study sample of up to 9,000 families that are part of the treatment and control groups. The work covered under this information request is for the baseline survey. The Rent Reform demonstration is structured around a two-group random assignment study. Using this design, up to 9,000 households will be recruited and randomly allocated to the program group or control group, each of which will include up to 4,500 households. Four PHAs have agreed to participate in this demonstration project: (1) Lexington Housing Authority, Kentucky; (2) Louisville Metro Housing Authority, Kentucky; (3) San Antonio Housing Authority, Texas; and (4) District of Columbia Housing Authority, District of Columbia.

The fundamental goals of the proposed study are:

1. Increase work effort and reported earnings of families
2. Serve more families

Ideally, the alternative rent model would yield at least as much income to the PHAs as the current system and would allow administrative savings as well. This would allow them to serve at least the same number of families and continue to meet the goal of preventing (or reducing) homelessness and minimizing rent burden. In addition, the incentive to underreport income would be reduced significantly. In order to measure the impact of the alternative rent model the Department needs to be able to track the study sample of up to 9,000 families to obtain data related to employment, earnings, and hardship outcomes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside HUD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons to the extent that such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I [1]—HUD's Library of Routine Uses published in the **Federal Register** (July 17, 2012, at 77 FR 41996);

2. To researchers for the purpose of producing a dataset to be used to support the Rent Reform Demonstration and Impact Evaluation of the Rent Reform Demonstration. The data collection will specifically provide data of the household's characteristics to describe the sample and ensure that the two study groups are random, and provide information that allows for the initial triennial calculations to be verified; and

3. To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All data collected will be input and stored in a secure database. Hard-copy materials containing respondent identifying information will be locked up when not in use. All hard-copy materials, including completed forms and electronic records on transportable media, will be kept in locked cabinets when not in use. In addition, data on transportable media will be encrypted. Records with PII will not be printed. Records and the file will be destroyed by MDRC at the completion of the study.

RETRIEVABILITY:

Records will be retrieved by social security number, entity ID and/or unique study identifier. Data will be retrieved from the initial data files using social security number, entityID, and/or unique study identifier. After receiving all data, another unique household ID will be assigned to each household known by the research team only (called the SampleID); records will be pulled by SampleID when possible.

SAFEGUARDS:

Access protections: Access to any server, security, storage, backup, security and infrastructure equipment requires an administrative password. These passwords are only available to senior IT staff and never shared. MDRC workstation and laptop configuration: MDRC employees use as a work station a standard laptop that is configured by authorized members of MDRC's IT Group. Laptops include a fingerprint scanner and application. Network access passwords system: MDRC uses a strong password system to control access to its secure data transfer. An application associates each employee's fingerprint with his/her network password. Wireless Access: No wireless access will be available to files, folders or servers involved with this project, except within MDRC's offices. Screen locking: MDRC's IT department has configured all MDRC computers to lock after 10 minutes without use and require a password or fingerprint scan to unlock. MDRC confidentiality pledge: All MDRC staff must sign a Confidentiality Pledge to abide by the corporate policies on data security and confidentiality.

RETENTION AND DISPOSAL:

The retention and disposal procedures will be in keeping with HUD's records management statutory obligations as described in 44 U.S.C. 3101 and 3303. Records will be maintained for a period not to exceed five years. All PII associated with the project will be destroyed by MDRC and their subcontractors or otherwise rendered irrecoverable per NIST Special Publication 800–88 ''Guidelines for Media Sanitization'' (September 2006) at the end of the contract. At the end of the contract, MDRC will destroy all electronic and paper-based records with PII unless otherwise instructed by HUD. All incoming files will be accounted for at the end of the project—deleted or permanently archived per agreement with HUD and with data providers.

SYSTEM MANAGER(S) AND ADDRESS:

Carol Star, Director, Division of Program Evaluation, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone Number (202) 402–6139.

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=append1.pdf.*

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiries about the existence of records, contact Donna Robinson-Staton, Chief Privacy Officer, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. Verification of your identity must include original signature and be notarized. Written request must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16. Additional assistance may be obtained by contacting: Donna Robinson-Staton, Chief Privacy Officer, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073 or the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410.

RECORD SOURCE CATEGORIES:

Data for this evaluation will be gathered through a variety of methods including informational interviews, direct observation, surveys, and analysis of administrative records. PHAs will provide program participants records, as well as information obtained through an interview of voucher holders that includes: (1) Output of random assignment process data, and (2) Responses provided to baseline information form. Administrative data will come from the participating PHAs' data systems and HUD's Inventory Management System, also known as the Public and Indian Housing Information Center (PIC). This information will be entered into MDRC's on-line system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2015–07613 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5696–N–15]

Additional Clarifying Guidance, Waivers, and Alternative Requirements for Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds Under the Disaster Relief Appropriations Act, 2013

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD. ACTION: Notice.

SUMMARY: This Notice provides a waiver and alternative requirement for the State of New Jersey's tenant-based rental assistance program funded through its Community Development Block Grant disaster recovery (CDBG–DR) grant pursuant to the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2) (the Appropriations Act). In addition, this Notice provides an alternative requirement for Major (Covered) Infrastructure Projects funded by grantees receiving an allocation for disasters occurring in 2013 under the Appropriations Act. This Notice also modifies a requirement for Disaster Recovery Grant Reporting System (DRGR) reporting requirements for all grantees receiving an allocation of CDBG–DR grants pursuant to the Appropriations Act.

DATES: *Effective Date:* April 7, 2015.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Appropriations Act made available $16 billion in Community Development Block Grant disaster recovery (CDBG–DR) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. On March 1, 2013, the President issued a sequestration order pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced the amount of funding for CDBG–DR grants under the Appropriations Act to $15.18 billion. To date, a total of $15.18 billion has been allocated or set aside: $13 billion in response to Hurricane Sandy, $514 million in response to disasters occurring in 2011 or 2012, $655 million in response to 2013 disasters, and $1 billion set aside for the National Disaster Resilience Competition.

This Notice specifies a waiver and modifies requirements for grantees in receipt of allocations under the Appropriations Act, which are described within the **Federal Register** Notices published by the Department on March 5, 2013 (78 FR 14329), April 19, 2013 (78 FR 23578), May 29, 2013 (78 FR 32262), August 2, 2013 (78 FR 46999), November 18, 2013 (78 FR 69104), December 16, 2013 (78 FR 76154), March 27, 2014 (79 FR 17173), June 3, 2014 (79 FR 31964), July 11, 2014 (79 FR 40133), October 7, 2014 (79 FR 60490), October 16, 2014 (79 FR 62182), and January 8, 2015 (80 FR 1039), referred to collectively in this Notice as the ''Prior Notices.'' The requirements of the Prior Notices continue to apply, except as modified by this Notice.[1]

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of Title I of the Housing and

[1] Links to the Prior Notices, the text of the Appropriations Act, and additional guidance prepared by the Department for CDBG–DR grants, are available on the HUD Exchange Web site: *https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/.*

Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

For the waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the waiver is not inconsistent with the overall purpose of the HCD Act. Grantees may request waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

1. Tenant-based rental assistance (State of New Jersey only). The State of New Jersey previously requested a waiver of 42 U.S.C. 5305(a) in order to provide tenant-based rental assistance to households impacted by disasters eligible under the Appropriations Act, and the Department granted this waiver in the **Federal Register** Notice published on July 11, 2014 (79 FR 40134). This Notice replaces the waiver in the Notice published on July 11, 2014, in section II.3 and increases the amount of funding for this activity by providing an additional $15 million of CDBG–DR funds for tenant- based rental assistance, increasing the amount covered by the waiver from $17 million to $32 million.

This waiver makes eligible up to $32 million of CDBG–DR funds to be used for rental assistance, utility payments and, if necessary, rental costs (*i.e.,* security deposits and utility deposits). This assistance may be provided on behalf of beneficiaries for a period of up to two years. The State justified a longer term of assistance in order to meet the housing needs of vulnerable populations displaced by Hurricane Sandy until construction of affordable rental units is completed and those units become available.

On May 30, 2014, the State entered into a Voluntary Compliance Agreement (VCA) with the Department in response to a complaint filed by civil rights and fair housing organizations regarding the State's administration of its CDBG–DR funded recovery programs. The VCA commits the State to providing an additional $15 million of CDBG–DR funds for tenant- based rental assistance, increasing the amount covered by the initial waiver from $17 million to $32 million.

Thousands of households in New Jersey remain displaced and continue to need housing at a time when the State's housing stock has not fully recovered from the disaster. The decrease in the housing supply placed upward pressure on housing costs, making housing less affordable for households already strained by hurricane-related expenses. By increasing the amount of funding available for tenant-based rental assistance, the State will be able to assist more households and to minimize the incidence of homelessness by providing re-housing and rental assistance. Additionally, the State will link the assisted beneficiaries with services that can help them become stable and self-sufficient. Throughout the rental assistance period, assisted households will receive referrals to available long-term units, as well as housing counseling.

After reviewing the State's request, and in accordance with the VCA, HUD is waiving 42 U.S.C 5305(a) to make eligible an additional $15 million of CDBG–DR funds for rental assistance and utility payments paid for up to two years on behalf of homeless and at-risk low- and moderate-income households displaced by Hurricane Sandy when such assistance or payments are part of a homeless prevention or rapid re-housing program or activity. The State's tenant-based rental assistance must be funded through its Supportive Services program, limited to payments on behalf of beneficiaries of that program as described in the State's approved Action Plan, and must not be tied to HUD's Section 8 program assistance. This waiver permits the State to review and approve applications for tenant-based rental assistance on behalf of beneficiaries from January 1, 2014 to January 1, 2016, and to provide rental assistance on behalf of approved applicants for up to 24 months, but in no case may assistance be provided on behalf of a beneficiary after January 1, 2018. The additional funds provided for the State's tenant-based rental assistance program through this waiver are subject to all requirements in the Notice published on July 11, 2014 (79 FR 40133) as well as the requirements of the VCA and any subsequent amendments to the VCA.

2. *Identification/Description of Covered Projects (2013 Disaster Grantees only).* In the **Federal Register** Notice published on October 16, 2014 (79 FR 62182), the Department modified requirements for Covered Projects implemented by Hurricane Sandy grantees by stating that grantees need only provide an estimate of the total project cost and CDBG–DR contributions, instead of providing the exact amount of funding. The Department is extending this flexibility to Covered Projects held to the requirements of the Notice published on June 3, 2014 (79 FR 31964). For any Covered Project held to the requirements of that Notice, Section V.3.g.1 (''Action Plan for Disaster Recovery waiver and alternative requirement—Infrastructure Programs and Projects, Additional Requirements for Major Infrastructure Projects, Identification/Description''), is modified to require: A description of the Covered Project, including: total project cost estimate (illustrating both the CDBG–DR award as well as other federal resources for the project, such as funding provided by the Department of Transportation or FEMA), CDBG eligibility (*i.e.,* a citation to the HCD Act, applicable **Federal Register** notice, or a CDBG regulation), how it will meet a national objective, and the project's connection to Hurricane Sandy or other disasters cited in this Notice. The Department recognizes that grantees often finance large scale infrastructure projects by leveraging several sources of funds that may shift over time. Therefore, the Department may elect to approve projects based on estimates of total project cost and other funding sources as well as the CDBG–DR contribution amount.

Grantees are expected to provide the best estimates available and the expected timeline for determining the exact costs. Grantees must submit an Action Plan Amendment to reflect any material adjustments to the cost estimate. Where an adjustment of the CDBG–DR contribution to a Covered Project triggers the substantial amendment criteria described in the March 5, 2013 Notice (78 FR 14329) at Section VI.A.3.a. by exceeding the $1 million threshold, grantees must submit a Substantial Action Plan Amendment subject to the requirements of that Notice, which requires no less than 7 calendar days to solicit public comment. All Covered Projects are subject to the 30-day comment period and public hearing required by the July 3, 2014, Notice (79 FR 31964). However, HUD will consider resubmissions of Covered Projects that have fulfilled the public review requirements and were submitted to HUD prior to the effective date of this Notice if they are revised only in accordance with the amended description requirements. Such resubmissions are subject to non-substantial Action Plan Amendment requirements.

3. *Reporting of Responsible Organizations in DRGR (all P.L. 113–2 grantees).* In order to draw CDBG–DR funds, grantees must enter an Action Plan into DRGR that includes all activities to be funded. DRGR requires

that at least one Primary Responsible Organization be entered for each activity, and grantees may choose to add ancillary Responsible Organizations to an activity. A Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered for each Responsible Organization. The March 5, 2013 Notice (78 FR 14329) required grantees to enter a DUNS number into the system for any entity carrying out a CDBG–DR funded activity, including the grantee, recipient(s) and subrecipient(s), contractor(s) and developers carrying out a CDBG–DR activity. The language describing DRGR reporting requirements was later revised in the July 11, 2014 Notice (79 FR 40134) to exclude requirements for identifying contracts above $25,000. This Notice, however, did not modify requirements for entering Responsible Organizations or DUNS numbers. To reduce the reporting burden on grantees, paragraph II.1.a. at 79 FR 40134 is amended to require that grantees only enter a DUNS number for the Responsible Organization or Organizations associated with an activity—with the understanding that only a single primary Responsible Organization is required to be identified within grantee DRGR Action Plans—and now reads as follows:

''The Action Plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG–DR funds. The grantee may enter activities into DRGR before or after submission of the Action Plan to HUD. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization or organizations that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for each entity designated as a Responsible Organization for the activity.''

Grantees are reminded that this modification applies only to requirements for DRGR DUNS number reporting and does not change any other Federal DUNS number reporting requirements.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice is as follows: 14.269.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: March 27, 2015.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs, Community Planning and Development.

[FR Doc. 2015–07622 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2015–N064]; [FXMB123109WEBB0–145–FF09M25100]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; North American Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on April 30, 2015. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before May 4, 2015.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0019'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018–0019.

Title: North American Woodcock Singing Ground Survey.

Service Form Number(s): 3–156.

Type of Request: Extension of currently approved collection.

Description of Respondents: State, Provincial, local, and tribal employees.

Frequency of Collection: Annually.

Respondent's Obligation: Voluntary.

Estimated Number of Respondents: 759.

Estimated Annual Number of Responses: 759.

Estimated Total Annual Burden Hours: 1,354 hours. We estimate that 662 persons will enter data electronically, with an average reporting burden of 1.8 hours per respondent. For all other respondents, we estimate the reporting burden to be 1.67 hours per respondent.

Estimated Annual Nonhour Burden Cost: None.

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703–712) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–754j–2) designate the Department of the Interior as the primary agency responsible for:

- Management of migratory bird populations frequenting the United States, and
- Setting hunting regulations that allow for the well-being of migratory bird populations.

These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. State, Federal, Provincial, local, and tribal conservation agencies conduct the survey annually to provide the data necessary to determine the population status of the woodcock. In addition, the information is vital in

assessing the relative changes in the geographic distribution of the woodcock. We use the information primarily to develop recommendations for hunting regulations. Without information on the population's status, we might promulgate hunting regulations that:

- Are not sufficiently restrictive, which could cause harm to the woodcock population, or
- Are too restrictive, which would unduly restrict recreational opportunities afforded by woodcock hunting.

The Service, State conservation agencies, university associates, and other interested parties use the data for various research and management projects.

Comments Received and Our Responses

Comments: On September 12, 2014, we published in the **Federal Register** (79 FR 54739) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on November 12, 2014. We received one comment. The commenter objected to the hunting of birds and the survey, but did not address the information collection requirements. We have not made any changes to our requirements.

Request for Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: March 30, 2015.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2015–07553 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2015–N055; FXES11130200000–156–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Both the Act and the National Environmental Policy Act require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before May 4, 2015.

ADDRESSES: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at Division of Classification and Recovery, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920.

SUPPLEMENTARY INFORMATION: The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the appropriate permit number (*e.g.,* Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–58490B

Applicant: Karen Krebbs, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of lesser long-nosed bat (*Leptonycteris yerbabuenae*) within Arizona.

Permit TE–42739A

Applicant: Sea Life Arizona, Tempe, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct husbandry and holding of the following species within Arizona:

- Apache trout (*Oncorhynchus apache*)
- Bonytail chub (*Gila elegans*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Desert pupfish (*Cyprinodon macularius*)
- Humpback chub (*Gila cypha*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Gila trout (*Oncorhynchus gilae gilae*)
- Green sea turtle (*Chelonia mydas*)
- Loach minnow (*Tiaroga cobitis*)
- Razorback sucker (*Xyrauchen texanus*)
- Spikedace (*Meda fulgida*)
- Woundfin (*Plagopterus argentissimus*)
- Yaqui beautiful shiner (*Cyprinella formosa*)
- Yaqui chub (*Gila purpurea*)
- Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*)

Permit TE–022190

Applicant: Arizona—Sonora Desert Museum, Tucson, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct husbandry and holding of the following species within Arizona:

- Bonytail chub (*Gila elegans*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Desert pupfish (*Cyprinodon macularius*)
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Humpback chub (*Gila cypha*)
- Lesser long-nosed bat (*Leptonycteris yerbabuenae*)
- Loach minnow (*Tiaroga cobitis*)
- Masked bobwhite quail (*Colinus virginianus ridgwayi*)
- Mexican gray wolf (*Canis lupus baileyi*)
- Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*)
- Ocelot (*Leopardus pardalis*)
- Quitobaquito pupfish (*Cyprinodon eremus*)
- Razorback sucker (*Xyrauchen texanus*)
- Sonora chub (*Gila ditaenia*)
- Sonoran tiger salamander (*Ambystoma tigrinum stebbinsi*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Spikedace (*Meda fulgida*)
- Woundfin (*Plagopterus agentissimus*)
- Yaqui chub (*Gila purpurea*)
- Yaqui topminnow (*Poeciliopsis occidentalis sonorensis*)

Permit TE–30425B

Applicant: David Haygari, Cincinnati, Ohio.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for American burying beetle (*Nicrophorus americanus*) within Kansas and Nebraska.

Permit TE–837751

Applicant: Bureau of Reclamation, Phoenix, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for loach minnow (*Rhinichthys cobitis*) and spikedace (*Meda fulgida*) within Arizona.

Permit TE–820730

Applicant: New Mexico Energy, Minerals, and Natural Resources. Department—Forestry Division, Santa Fe, New Mexico.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys and collection of the following plants within New Mexico:

- *Argemone pinnatisecta* (Sacramento prickly poppy)
- *Astragalus humillimus* (Mancos milk-vetch)
- *Cirsium vinaceum* (Sacramento Mountains thistle)
- *Coryphantha sneedii var. leei* (Lee's pincushion cactus)
- *Coryphantha sneedii var. sneedii* (Sneed's pincushion cactus)
- *Echinocereus fendleri var. kuenzieri* (Kuenzler's hedgehog cactus)
- *Erigeron rhizomatus* (Zuni fleabane)
- *Eriogonum gypsophilum* (gypsum wild buckwheat)
- *Hedeoma todsenii* (Todsen's pennyroyal)
- *Helianthus paradoxus* (Pecos sunflower)
- *Ipomopsis sancti-spiritus* (Holy Ghost ipomopsis)
- *Pediocactus knowltonii* (Knowlton's cactus)
- *Sclerocactus mesae-verdae* (Mesa Verde cactus)

Permit TE–60111B

Applicant: Natalie Robb, Globe, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species within Arizona:

- Arizona hedgehog cactus (*Echinocereus triglochidiatus* var. *arizonicus*)
- Desert pupfish (*Cyprinodon macularius*)
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Loach minnow (*Tiaroga cobitis*)
- Southwestern willow flycatcher (*Empidonax traillii extimus)*

Permit TE–051139

Applicant: Turner Endangered Species Fund, Bozeman, Montana.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys; removal and transportation from the wild; captive breeding; and management field activities related to conservation, transportation, and release into suitable unoccupied habitat for Chupadera springsnail (*Pyrgulopsis chupaderae*) within New Mexico.

Permit TE–168688

Applicant: Sarah Itz, Austin, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–42737A

Applicant: Sevenecoten, LLC., Dripping Springs, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys and nest monitoring of golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas.

Permit TE–35619A

Applicant: Marvin Miller, Spring Branch, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species in Texas:

- Bee Creek Cave harvestman (*Texella reddelli*)
- Bone Cave harvestman (*Texella reyesi*)
- Braken Bat Cave meshweaver (*Cicurina venii*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Cokendolpher Cave harvestman (*Texella cokendolpheri*)
- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
- Government Canyon Bat Cave spider (*Neoleptoneta microps*)
- Ground beetle (Unnamed) (*Rhadine exilis*)
- Ground beetle (Unnamed) (*Rhadine infernalis*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Madla Cave meshweaver (*Cicurina madla*)
- Robber Baron Cave meshweaver (*Cicurina baronia*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta* (=*Leptoneta*) *myopica*)

Permit TE–61040B

Applicant: Shenandoah Deer Services, LLC., San Marcos, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–091552

Applicant: Zane Homesley, Austin, Texas.

Applicant requests aa renewal to a current permit for research and recovery purposes to conduct presence/absence surveys for American burying beetle (*Nicrophorus americanus*) within Texas

and Oklahoma; and for black-capped vireo (*Vireo atricapilla*), golden-cheeked warbler (*Dendroica chrysoparia*), southwestern willow flycatcher (*Empidonax traillii extimus*), and Houston toad (*Bufo houstonensis*) within Texas.

Permit TE–189566

Applicant: Monica Geick, Littleton, Colorado.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–92407A

Applicant: Raven Environmental Services, Inc., Huntsville, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct surveys using peeper scopes to examine cavities of nesting red-cockaded woodpeckers (*Picoides borealis*) throughout the range of the species in the United States.

Permit TE–35163A

Applicant: Joseph Grzybowski, Norman, Oklahoma.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of black-capped vireo (*Vireo atricapilla*) within Oklahoma and Texas.

Permit TE–61045B

Applicant: Jennifer Scott, Yukon, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of black-capped vireo (*Vireo atricapilla*) within Oklahoma and Texas; southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, California, Colorado, Nevada, New Mexico, Texas, and Utah; and Least Bell's vireo (*Vireo bellii pusillus*) within California.

Permit TE–61046B

Applicant: Christina Perez, Baton Rouge, Louisiana.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of Americans burying beetle (*Nicroporus americans*) within Oklahoma.

Permit TE–61048B

Applicant: Veteran Environmental, LLC., Choctaw, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Arkansas, Texas, and Oklahoma.

Permit TE–61124B

Applicant: Curtis Creighton, Hammond, Indiana.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Oklahoma.

Permit TE–028605

Applicant: SWCA Environmental Consultants, Inc., Flagstaff, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species, where they occur, in Arizona, California, Colorado, Nevada, New Mexico, Texas, and Utah:

- Bee Creek Cave harvestman (*Texella reddelli*)
- Black-footed ferret (*Mustela nigripes*)
- Bone Cave harvestman (*Texella reyesi*)
- Bonytail chub (*Gila elegans*)
- Braken Bat Cave meshweaver (*Cicurina venii*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Cokendolpher Cave harvestman (*Texella cokendolpheri*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Comal Springs dryopid beetle (*Stygoparnus comalensis*)
- Comal Springs riffle beetle (*Heterelmis comalensis*)
- Desert pupfish (*Cyprinodon macularius*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
- Government Canyon Bat Cave spider (*Neoleptoneta microps*)
- Ground beetle (Unnamed) (*Rhadine exilis*)
- Ground beetle (Unnamed) (*Rhadine infernalis*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*)
- Kanab ambersnail (*Oxyloma haydeni kanabensis*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Lesser long-nosed bat (*Leptonycteris yerbabuenae*)
- Loach minnow (*Tiaroga cobitis*)
- Madla Cave meshweaver (*Cicurina madla*)
- Mexican long-nosed bat (*Leptonycteris nivalis*)
- Mount Graham red squirrel (*Tamasciurus hudsonicus grahamensis*)
- Razorback sucker (*Xyrauchen texanus*)
- Robber Baron Cave meshweaver (*Cicurina baronia*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Spikedace (*Meda fulgida*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta* (=*Leptoneta*) *myopica*)
- Woundfin (*Plagopterus argentissimus*)
- Yaqui chub (*Gila purpurea*)
- Yuma clapper rail (*Rallus longirostris yumanensis*)

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: March 25, 2015.

Joy E. Nicholopoulos

Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2015–07548 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–0019; FXIA167109ADV15–156–FF09A00000]

Advisory Council on Wildlife Trafficking

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public meeting of the Advisory Council on Wildlife Trafficking (Council). The Council's purpose is to provide expertise and support to the Presidential Task Force on Wildlife Trafficking. You may attend the meeting in person, or you may participate via telephone. At this time, we are inviting submissions of questions and information for consideration during the meeting.

DATES: *Meeting:* The meeting will be held on Thursday, April 23, 2015, from 9 a.m. to 1 p.m. Eastern Time.

Registering to Attend the Meeting: To attend the meeting in person, you must register by close of business on April 15, 2015. (You do not need to register to listen via phone.) Please submit your name, email address, and phone number to Mr. Cade London to complete the registration process (see **FOR FURTHER INFORMATION CONTACT**). Because there is limited seating available, registrations will be taken on a first-come, first-served basis. Members of the public requesting reasonable accommodations, such as hearing interpreters, must contact Mr. London, in writing (preferably by email), no later than April 15, 2015.

Submitting Questions or Information: If you want to provide us with questions and information to be considered during the meeting, your material must be received or postmarked on or before April 8, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section) must be received by 11:59 p.m. Eastern Time on April 8, 2015.

Making an Oral Presentation at the Meeting: If you want to make an oral presentation at the meeting (in person or by phone), contact Mr. London no later than April 8, 2015 (see **FOR FURTHER INFORMATION CONTACT**). For more information, see Making an Oral Presentation under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Meeting Location:* The meeting will be held at the U.S. Department of the Interior, South Interior Building Auditorium, 1951 Constitution Avenue NW., Washington, DC 20240.

Meeting Call-In Numbers: Members of the public unable to attend the meeting in person may call in at 888–946–7612 (toll free) or 1–517–308–9325 (toll) using the verbal passcode TRAFFIC. Members may register to give an oral presentation over the phone as well. For more information, see Making an Oral Presentation under **SUPPLEMENTARY INFORMATION**.

Submitting Questions or Information: You may submit questions or information for consideration during the meeting by one of the following methods:

1. *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–HQ–IA–2014–0019. Then click on the ''Search'' button. You may submit questions or information by clicking on ''Comment Now!''

2. *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–IA–2014–0019; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: ABHC; Falls Church, VA 22041–3803.

We will not accept email or faxes. We request that you send comments only by the methods described above. 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 Submitting Public Comments section below for more information).

Reviewing Comments Received by the Service: See Reviewing Public Comments in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Cade London, Special Assistant, International Affairs, U.S. Fish and Wildlife Service, by email at *cade_london@fws.gov* (preferable method of contact); by U.S. mail at U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: IA; Falls Church, VA 22041–3803; by telephone at (703) 358–2584; or by fax at (703) 358–2276.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.), we announce that the Advisory Council on Wildlife Trafficking (Council) will hold a meeting to discuss the implementation of the National Strategy for Combating Wildlife Trafficking, and other Council business as appropriate. The Council's purpose is to provide expertise and support to the Presidential Task Force on Wildlife Trafficking.

You may attend the meeting in person, or you may participate via telephone. At this time, we are inviting submissions of questions and information for consideration during the meeting.

Background

Executive Order 13648 established the Advisory Council on Wildlife Trafficking on August 30, 2013, to advise the Presidential Task Force on Wildlife Trafficking, through the Secretary of the Interior, on national strategies to combat wildlife trafficking, including, but not limited to:

1. Effective support for anti-poaching activities;

2. Coordinating regional law enforcement efforts;

3. Developing and supporting effective legal enforcement mechanisms; and

4. Developing strategies to reduce illicit trade and consumer demand for illegally traded wildlife, including protected species.

The eight-member Council, appointed by the Secretary of the Interior, includes former senior leadership within the U.S. Government, as well as chief executive officers and board members from conservation organizations and the private sector. For more information on the Council and its members, visit *http://www.fws.gov/international/advisory-council-wildlife-trafficking/.*

Meeting Agenda

The Council will consider:

1. National Strategy updates and Task Force discussions,

2. Administrative topics, and

3. Public comment and response.

The final agenda will be posted on the Internet at *http://www.fws.gov/international/advisory-council-wildlife-trafficking/,* as well as at *http://www.regulations.gov.*

Making an Oral Presentation

Members of the public who want to make an oral presentation in person or by telephone at the meeting will be prompted during the public comment section of the meeting to provide their presentation and/or questions. If you want to make an oral presentation in person or by phone, contact Mr. Cade London (**FOR FURTHER INFORMATION CONTACT**) no later than the date given in the **DATES** section for *Making an Oral Presentation at the Meeting.*

Registered speakers who want to expand on their oral statements, or those who wanted to speak but could not be accommodated on the agenda, are invited to submit written statements to the Council after the meeting. Such written statements must be received by Mr. London, in writing (preferably via email), no later than April 30, 2015.

Submitting Public Comments

You may submit your questions and information by one of the methods listed in **ADDRESSES**. We request that you send comments by only one of the methods described in **ADDRESSES**.

If you submit information via the Federal eRulemaking Portal (*http://*

www.regulations.gov), your entire submission—including any personal identifying information—will be posted on the Web site.

If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions at *http://www.regulations.gov*.

Reviewing Public Comments

Comments and materials we receive will be available for public inspection at *http://www.regulations.gov*. Alternatively, you may view them by appointment during normal business hours at 5275 Leesburg Pike, Falls Church, VA 22041–3803. Please contact Mr. London (see **FOR FURTHER INFORMATION CONTACT**).

Obtaining Meeting Minutes

Summary minutes of the meeting will be available on the Council Web site at *http://www.fws.gov/international/advisory-council-wildlife-trafficking/,* as well as at *http://www.regulations.gov*. Alternatively, you may view them by appointment during normal business hours at 5275 Leesburg Pike, Falls Church, VA 22041–3803. Please contact Mr. London (see **FOR FURTHER INFORMATION CONTACT**).

Gloria Bell,

Deputy Assistant Director, International Affairs, U.S. Fish and Wildlife Service.

[FR Doc. 2015–07546 Filed 4–1–15; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[145A21000DDAAK3000000/ ADT00000.00000]

Little Traverse Bay Bands of Odawa Indians Liquor Control Statute

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Little Traverse Bay Bands of Odawa Indians Liquor Control Statute. The Statute establishes a Liquor and Tobacco Licensing Board to regulate and control the possession, sale, and consumption of liquor and tobacco within the jurisdiction of the Little Traverse Bay Bands of Odawa Indians. The Statute consists of two chapters: Waganakising Odawak Statute 2009–019 (Liquor and Tobacco Licensing Board Statute) and Waganakising Odawak Statute 2014–006 (Liquor and Tobacco License Violations Statute). The Statute repeals and replaces the previous liquor control ordinance published in the **Federal Register** on December 14, 1999 (64 FR 69780), and any and all previous Statutes.

DATES: This ordinance shall become effective 30 days after April 2, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. David Christensen, Tribal Operations Officer, Midwest Regional Office, Bureau of Indian Affairs, 5600 West American Blvd., Suite 500, Bloomington, Minnesota 55437, Telephone: (612) 725–4554; Fax: (612) 713–4401, or Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Office of Indian Services, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Little Traverse Bay Bands of Odawa Indians duly adopted Waganakising Odawak Statute 2009–019 (Liquor and Tobacco Licensing Board Statute) on July 26, 2009, and Waganakising Odawak Statute 2014–006 (Liquor and Tobacco License Violations Statute) on June 8, 2014. Together, the Statutes repeal and replace the previous liquor control ordinance published in the **Federal Register** on December 14, 1999 (64 FR 69780).

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Little Traverse Bay Bands of Odawa Indians duly adopted Statute Waganakising Odawak Statute 2009–019 (Liquor and Tobacco Licensing Board Statute) on July 26, 2009, and Waganakising Odawak Statute 2014–006 (Liquor and Tobacco License Violations Statute) on June 8, 2014.

Dated: March 26, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

Chapter 27. Liquor and Tobacco Licensing Board Statute

6.2701 Short Title

This Statute may be cited as the ''Licensing Board.''

(Source: WOS 2009–019, July 26, 2009, Section I)

6.2702 Purpose

The purpose of this Statute is to provide for the establishment of the Liquor and Tobacco Licensing Board that issues, renews and regulates liquor and tobacco licenses and permits in order to protect the rights and interest of Tribal Citizens.

(Source: WOS 2009–019, July 26, 2009, Section II)

6.2703 Definitions

The following definitions apply in this Statute:

A. ''Alcoholic Liquor'' means the four varieties of liquor (alcohol, spirits, wine and beer) and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquor or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

B. ''Board'' means the Liquor and Tobacco Licensing Board.

C. ''Cigarette'' means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

D. ''Licensee'' means any person or entity, including any employee or agent of the Licensee, licensed by the Tribe to sell alcohol or tobacco on Tribal trust lands.

E. ''LTBB'' or ''Tribe'' means the Waganakising Odawak Nation, also known as the Little Traverse Bay Bands of Odawa Indians.

F. ''Person'' or ''Entity'' means any individual, firm, partnership, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

G. ''Tobacco Products'' means all forms of tobacco prepared in such a manner as to be suitable for chewing or smoking including cigarettes, cigars, smoking tobacco, snuff, and chewing tobacco.

H. ''Tribal Court'' means the Little Traverse Bay Bands of Odawa Tribal Court.

(Source: WOS 2009–019, July 26, 2009, Section III)

6.2704 Liquor and Tobacco Licenses

A. Any person or entity that shall engage in the sale of alcohol or tobacco within the jurisdiction of the Tribe shall first obtain a license for such sale, provided that any person or entity engaging in such sales prior to the adoption of this Statute shall obtain a license within sixty (60) days from the enactment of this Statute.

B. A license shall be valid for a period of one (1) year from the date of its issuance and shall expire automatically without notice on the expiration date stated in the license.

C. No license shall be transferable.

D. Temporary licenses for a limited time-frame and purpose may also be available.

(Source: WOS 2009–019, July 26, 2009, Section IV)

6.2705 Liquor and Tobacco Licensing Board

A. The Liquor and Tobacco Licensing Board (''Board'') is hereby created within the Executive Branch to carry out the purposes stated in this Statute, and each annual budget submitted by the Executive shall include funding for the Board's operation subject to funding availability.

B. The Board shall adopt policies and regulations to carry out its duties under this Statute, subject to Tribal Council approval. General application of Commission, Board, and Committee Statutes shall not apply to this board unless designated otherwise.

C. The Board shall meet once a year in regular meetings and additionally if necessary within 15 days of receiving any request for action by the Board.

D. Appointments, Term, Nepotism, and Conflict.

1. The Board shall consist of three (3) members nominated by the Executive and confirmed by the Tribal Council. To be eligible for appointment a person must be a Tribal Citizen who is at least eighteen (18) years of age and is familiar with all Tribal liquor and tobacco laws, regulations, policies, and procedures. One Board member will have at least two years experience in law enforcement, legal, or judiciary. The Board members shall serve three-year terms with initial appointments being one member for one year, a second member for two years, and a third for three years to provide for staggered terms.

2. Tribal employees may serve on the Board and may be compensated by stipend if the Board is not directly related to their employment, does not interfere with their work, and does not meet during scheduled work hours. If a Board meets during scheduled working hours and the staff member wishes to attend, the staff member must utilize PTO (personal time off), or flextime upon prior approval of the individual's supervisor.

3. Two or more members of the same immediate family as defined in the Constitution shall not serve on the Board at the same time.

4. No Board member may participate in making any decision that involves a personal or financial interest of the Board or a member of his or her immediate family unless such interest is held in common with the Tribe and its Citizens.

E. Open Meetings and Records

1. Board meetings shall be open to LTBB Citizens.

2. Board records shall be open to LTBB Citizens.

3. The Board must provide notice of meetings at least five days in advance of the meeting.

F. Compensation and Stipends

1. Board members who attend any meeting or hearing directly related to their duties or attend any event where their attendance is required may be compensated for attendance so long as there are funds available in the Board's budget.

2. Board members shall receive a stipend for attendance at Board meetings subject to the availability of funds.

3. Any Board member who attends a properly noticed meeting shall be eligible for a stipend, mileage, and expenses, even if no official action can be taken due to lack of a quorum.

(Source: WOS 2009–019, July 26, 2009, Section V)

6.2706 Authority

A. The Board shall hear and decide the granting, denial, or renewal of licenses and permits.

B. The Board shall hear and decide on the suspension or revocation of a license based on citations of violations.

C. The Board shall hear and decide appeals on the issuance of citations.

D. The Board may hire inspectors or investigators provided funding availability.

(Source: WOS 2009–019, July 26, 2009, Section VII)

6.2707 Appeals of Citations to the Board

A. Any party who has received an issuance of citations and disagrees with the citation may appeal to the Board.

1. An appeal of a citation must be filed within fourteen (14) days of the issuance of the citation. The party must file a written appeal to the Board including at a minimum:

a. A clear and concise statement of the reason(s) the appellant believes the decision should be overturned by the Board; and

b. The relief requested from the Board.

B. The aggrieved party must be given an effective opportunity to defend themselves by confronting any adverse witnesses and by being allowed to present witnesses, evidence and arguments.

C. The Board shall hear the appeal within fifteen (15) calendar days of filing, either during a regular meeting or special meeting called for that purpose, and issue its written ruling within ten (10) days of such hearing.

(Source: WOS 2009–019, July 26, 2009, Section VIII)

6.2708 Judicial Review

A. Decisions of the Board may be appealed to the Tribal Court by filing a written appeal with the Court within ten (10) days of the Board's ruling. The Court shall uphold the decision of the Board unless the Court determines that the Board's decision is clearly arbitrary, capricious, or otherwise not in accordance with applicable law or regulations.

B. The Tribal Council expressly waives the sovereign immunity of the Tribe and its agents for the limited purpose of reviewing the decisions of the Board under the standards set forth in Section VI.A and allowing for the remedies set forth in Section VI.C.

C. In the event the Court finds the Board's decision to be clearly arbitrary, capricious, or otherwise not in accordance with applicable law or regulations, it shall enter an equitable order overturning the Board's action, but shall not award monetary damages.

(Source: WOS 2009–019, July 26, 2009, Section IX)

6.2709 Sovereign Immunity

The Tribe, and all of its constituent parts, which includes but is not limited to Tribal enterprises, subordinate organizations, boards, committees, officers, employees and agents, are immune from suit in any jurisdiction except to the extent that such immunity has been clearly and expressly waived by Tribe Council.

(Source: WOS 2009–019, July 26, 2009, Section X)

6.2710 Regulations

The Executive may develop Regulations as it deems necessary for the implementation of the intent of this Statute and shall forward such Regulations to the Tribal Council for approval.

(Source: WOS 2009–019, July 26, 2009, Section XI)

6.2711 Savings Clause

In the event that any section, subsection, or phrase of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such part shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect so long as the overall intent of the Statute remains intact.

(Source: WOS 2009–019, July 26, 2009, Section XII)

6.2712 Effective Date

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2009–019, July 26, 2009, Section XIII)

Waganakising Odawak Statute 2014–006

Liquor and Tobacco License Violations Statute

Section I. Short Title

This Statute may be cited as the ''License Violation Statute.'' This Statute repeals and replaces Waganakising Odawak Statute 1999–008 and previous Statute WOS 1997–021, and any and all previous Statutes.

Section II. Purpose

The purpose of this Statute is to provide for violations of Liquor and Tobacco Licenses issued by the Liquor and Tobacco Licensing Board that may impair the issuance or renewal of a liquor or tobacco license or may cause such licenses to be suspended or revoked in order to protect the rights and interest of the Tribe and Tribal Citizens.

Section III. Authority

Tribal Council has the power and authority to regulate the liquor and tobacco sales and violations as set forth in this Statute in accordance with the Constitution, Article VII D (1), D (16), D (19), and D (24).

Section IV. Definitions

The following definitions apply in this Statute:

A. ''Alcoholic Liquor'' means the four varieties of liquor (alcohol, spirits, wine, and beer) and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquor or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance that contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

B. ''Board'' means the Liquor and Tobacco Licensing Board.

C. ''Cigarette'' means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

D. ''Licensee'' means any person or entity, includes any employee or agent of the Licensee, licensed by the Tribe to sell alcohol or tobacco on Tribal trust lands.

E. ''LTBB'' or ''Tribe'' means the Waganakising Odawak Nation, also known as the Little Traverse Bay Bands of Odawa Indians.

F. ''Person'' or ''Entity'' means any individual, firm, partnership, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

G. ''Tobacco Products'' means all forms of tobacco prepared in such a manner as to be suitable for chewing or smoking including cigarettes, cigars, smoking tobacco, snuff, and chewing tobacco.

H. ''Tribal Court'' means the Little Traverse Bay Bands of Odawa Tribal Court.

Section V. Liquor and Tobacco Licensing Board

The Liquor and Tobacco Licensing Board established by WAGANAKISING STATUTE, LIQUOR AND TOBACCO LICENSING BOARD STATUTE, is an Executive Board and is authorized to implement this statute, as may be amended.

Section VI. Liquor Violations

Citations may be issued for the violations of the following:

A. Under the age of Twenty-One (21).

1. A licensee shall not directly, individually, or by a clerk, agent, or servant knowingly sell, furnish, or give alcoholic liquor to a person under the age of twenty-one (21) or fail to make diligent inquiry as to whether the person is of age.

2. A licensee shall not allow any person who is less than eighteen (18) years of age to sell or serve alcoholic liquor.

B. Intoxicated Persons.

1. A licensee shall not directly or indirectly, individually or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a person who is visibly intoxicated.

2. A licensee shall not allow an intoxicated person to consume alcoholic liquor on the licensed premises.

C. Hours of Sales.

1. A licensee shall not sell at retail, give away, or furnish alcoholic liquor between the following hours: 2 a.m. and 7 a.m. of any day.

2. Variations:

The except as modified by an intergovernmental agreement that may apply to a specific Tribal enterprise and 4 a.m. and 7 a.m. on January 1 (New Year's Day).

D. Extended Hours.

An extended hour(s) permit is required for an on-premises licensee to allow for the sale or consumption of alcoholic liquor at any time other than the legal hours for the sale and consumption of alcoholic liquor.

E. Sale of Adulterated or Mislabeled Liquor.

1. A licensee by himself or by his agent or employee, shall not sell, offer for sale, or possess any alcoholic liquor that is adulterated or misbranded or any alcoholic liquor in bottles that have been refilled.

2. Alcoholic liquor shall be deemed adulterated if it contains any liquids or other ingredients not placed there by the original manufacturer or bottler. For the purposes of this Section, alcoholic liquor shall be deemed misbranded when not plainly labeled, marked, or otherwise designated.

3. Alcoholic liquor bottles shall be deemed to be refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer.

F. Premises.

1. A Licensee shall not allow alcoholic liquor sold for on-premises

consumption to be removed from premises.

2. A Licensee that sells wine on the premises may allow an individual who has purchased a meal and who has purchased and partially consumed a bottle of wine with the meal, to remove the partially consumed bottle from the premises upon departure, provided that the licensee or the licensee's clerk, agent, or employee shall reinsert a cork so that the top of the cork is level with the lip of the bottle.

3. This section does not allow for the removal of any additional unopened bottles of wine unless the licensee is licensed to conduct off premises sales.

4. This section does not prevent a hotel from allowing its invitees or guests to possess or consume, or both, on or about its premises, alcoholic liquor purchased by the invitee or guest from an off-premises retailer, and does not prevent a guest or invitee from entering and exiting the licensed premises with alcoholic liquor purchased from an off-premises retailer.

5. An off-premise licensee who is not licensed as an on-premise licensee shall not have open containers of alcoholic liquor on the premises.

6. An off-premise licensee who is not licensed as an on-premise licensee shall not allow the consumption of alcoholic liquor on the licensed premises, except as allowed in G (2).

7. An off-premise licensee shall not give bottle or can openers to purchasers and shall not open bottles or cans of alcoholic liquor for purchasers on the licensed premises.

8. An off-premise licensee shall not knowingly allow a person to consume alcoholic liquor on property owned, leased, or possessed by the licensee adjacent to the licensed premises.

G. Giving Away Alcoholic Liquor

1. A Licensee shall not give away any alcoholic liquor of any kind or description at any time in connection with his or her business, except manufacturers for consumption on the premises only.

2. Exceptions:

a. If the licensee is a hotel, the licensee may give away alcoholic liquor to an invitee or guest in connection with a business event or as a part of a room special or promotion for overnight accommodations.

b. Licensee may allow samplings or tastings of any alcoholic liquor for which monetary gain or other remuneration could reasonably be expected.

c. Tasting of alcoholic liquor as part of a bona fide market research organization that is conducted for a product before it is approved for sale.

d. Licensee may allow giving a sampling or tasting of alcoholic liquor to an employee of the licensee during the legal hours for consumption for the purpose of educating the employee regarding 1 or more types of alcoholic liquor so long as the employee is at least 21 years of age.

H. Quantity of Alcohol.

1. An on-premise licensee shall not sell, offer to sell, or advertise the sale of, an unlimited quantity of alcoholic liquor at a specific price.

2. No licensee shall sell, offer to sell, or advertise the sale of, two or more identical drinks containing alcoholic liquor to a person for their consumption for one price. When two or more identical drinks containing alcoholic liquor are served to a person at one time, the price charged for the second drink shall be the same price as for the first drink.

I. Prizes, alcohol use.

A licensee shall not participate in or sponsor any contest that requires the use or consumption of alcoholic liquor or features alcoholic liquor as a prize in connection with a contest. Sponsored events that involve the purchase of alcoholic liquor for eligibility are exempt.

J. Controlled Substances/Drug Paraphernalia.

A licensee shall not allow the sale, possession, or consumption on the licensed premises of any controlled substances that are prohibited by Tribal, State of Michigan or Federal Law.

K. Fights and Weapons.

1. A licensee shall not allow fights on or in the licensed premises, other than promotional events such as boxing, cage fights, etc. Nor shall a licensee, or the clerk, servant, agent, or employee of the licensee, allow, on the licensed premises, the annoying or molesting of customers or employees by other customers or employees.

2. A licensee shall not allow the unlawful possession or use of firearms, knives, or other weapons on the premises.

L. Improper or No Display of Liquor License/Permits.

Licenses issued by the commission shall be signed by the licensee, shall be framed under transparent material, and shall be prominently displayed in the licensed premises.

M. Suspension of License.

1. A licensee shall not sell, offer for sale, furnish, consume, or allow the consumption of, alcoholic liquor on the licensed premises during the period that the license is suspended by the Board.

2. During the time of suspension of a license by the Board, the notice of the suspension shall be continuously posted in a conspicuous place on the licensed premises in full view of the public.

N. Cooperation with Officers.

A licensee, or clerk, servant, agent or employee of the licensee, shall not hinder or obstruct a law enforcement officer, commission inspector, or investigator in the course of investigating or inspecting the premises and shall not refuse, fail, or neglect to cooperate with a law enforcement officer, commission, inspector or investigator in the performance of his or her duties to enforce the act or commission rules.

Section VII. Tobacco Violations

A. Prohibited Places. Smoking or carrying lighted tobacco in any form is prohibited in the following areas:

1. Public areas designated as ''non-smoking''.

2. Passenger elevators.

3. Tribal Governmental Buildings.

4. School Buildings.

5. Child Care Centers. Smoking is permitted on these premises during the time these facilities are not in operation, but the operator of the facility must inform parents or guardians that smoking on the premises may occur during these times.

6. Health Facilities. Smoking is prohibited in the common and treatment areas of health facilities, including hospitals, health clinics, and doctors' offices. Patients may be permitted to smoke if the medical staff determines that this prohibition would be detrimental to treatment. Smoking areas provided in these cases must be separately ventilated to ensure that there is a smoke-free environment in other patient care and common areas.

7. Licensed Nursing Homes and Licensed Homes for the Aged. Licensed nursing homes and licensed homes for the aged must adopt a policy that regulates smoking to provide patients with the option of non-smoking rooms, and restrict patient smoking to private or semiprivate rooms or designated smoking areas. Visitors and staff are permitted to smoke in designated smoking areas only. Tobacco sales are prohibited in nursing homes, except as provided for by owners. Notices must be posted for smoking and non-smoking areas.

8. Restaurants. Food service establishments seating fifty (50) or more persons must reserve a seating area for a nonsmoking section. All food service establishments seating fewer than fifty (50) people are not required to provide for a non-smoking section. Public areas in restaurants must be smoke-free. These areas include, but are not limited to, restrooms, coatrooms, and entrances.

Public areas do not include lobbies, waiting rooms, hallways, or lounges.

B. Under the Age of Eighteen (18).

1. A person shall not sell or furnish any tobacco product to a person less than eighteen (18) years of age.

2. It is an affirmative defense that the defendant had, and continues to have in force, a written policy to prevent the sale of tobacco products to minors and enforces said policy.

3. This does not apply to the handling or transportation of a tobacco product by a person under the age of eighteen (18) under the terms of employment.

4. This does not interfere with the right of a parent or legal guardian in the rearing and management of their minor children within the bounds of their private premises.

C. Sign Posting. A person who sells tobacco products at retail shall post, in a place close to the point of sale, conspicuous to both employees and customers, a sign produced by the Department of Community Health that states: ''THE PURCHASE OF TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE AND PROVISION OF TOBACCO PRODUCTS TO A MINOR ARE PROHIBITED BY LAW. A MINOR UNLAWFULLY PURCHASING OR USING TOBACCO PRODUCTS IS SUBJECT TO PENALTIES.''

D. Internet Sales. All sales conducted through the Internet, by telephone, or in a mail-order transaction shall be prohibited.

E. Single Cigarettes. A person who sells tobacco products at retail shall not sell a cigarette separately from its package. This does not apply to tobacco specialty stores or other retail stores that deal exclusively in the sale of tobacco products and smoking paraphernalia.

F. Vending Machines Placement. Vending machines are restricted to areas that are not easily accessible to persons under the age of eighteen (18) and are within the direct visual supervision of an adult.

G. Improper or no display of license/permits

Licenses issued by the commission shall be signed by the licensee, shall be framed under transparent material, and shall be prominently displayed in the licensed premises.

H. Suspension of License.

1. A licensee shall not sell, offer for sale, or furnish, tobacco on the licensed premises during the period that the license is suspended by the Board.

2. During the time of suspension of a license by the Board, the notice of the suspension shall be continuously posted in a conspicuous place on the licensed premises in full view of the public.

I. Cooperation with Officers.

A licensee, clerk, servant, agent, or employee of the licensee shall not hinder or obstruct a law enforcement officer, commission inspector, or investigator in the course of investigating or inspecting the premises and shall not refuse, fail, or neglect to cooperate with a law enforcement officer, commission inspector or investigator in the performance of his or her duties to enforce the act or commission rules.

Section VIII. Religious Freedom

Nothing in this Statute shall prohibit American Indians from practicing any recognized religious ceremony, ritual, or activity in accordance with their Religious Freedom.

Section IX. Marketing

A licensee shall not intentionally market for profit tobacco or tobacco products to persons under the age of eighteen (18).

Section X. Application of State Law

Per the United States Code, 18 U.S.C. 1161, all acts or transactions regarding liquor control shall conform to this Statute or the laws of Michigan, whichever is more stringent. Nothing in this section or Statute is intended to allow the State of Michigan to exercise any jurisdiction over the Tribe, its members, or any persons or transactions within jurisdiction of the Tribe. Nothing in this section or statute is intended to in any way waive or limit the sovereign immunity of the Tribe.

Section XI. Enforcement

A. The Tribal Law Enforcement Department is authorized to issue citations for violations of this Statute.

B. Any inspectors and/or investigators hired by the Board are authorized to issue citations of violations of this Statute.

Section XII. Savings Clause

In the event that any section, subsection or phrase of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such part shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect so long as the overall intent of the Statute remains intact.

Section XIII. Effective Date

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

[FR Doc. 2015–07614 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4337–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—3d Pdf Consortium, Inc.

Notice is hereby given that, on February 23, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 3D PDF Consortium, Inc. (''3D PDF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Leslie Miller (individual member), Greenville, SC; and Olivier Rigolett (individual member), Lyon, FRANCE, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 3D PDF intends to file additional written notifications disclosing all changes in membership.

On March 27, 2012, 3D PDF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2012 (77 FR 23754).

The last notification was filed with the Department on December 4, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 5, 2015 (80 FR 260).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–07529 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0260]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2015 Police Public Contact Survey (PPCS)

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 Volume 80, Number 19, pages 4946–4947, January 29, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 4, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lynn Langton, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: *Lynn.Langton@usdoj.gov*; telephone: 202–353–3328). 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 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* 2015 Police Public Contact Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number for the questionnaire is PPCS–1. 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 persons 16 years or older living in households located throughout the United States sampled for the National Crime Victimization Survey (NCVS). The PPCS will be conducted as a supplement to the NCVS in all sample households for a six (6) month period. The PPCS is one component of the BJS effort to fulfill the mandate set forth by the Violent Crime Control and Law Enforcement Act of 1994 to collect, evaluate, and publish data on the use of excessive force by law enforcement personnel. The goal of the collection is to report national statistics that provide a better understanding of the types, frequency, and outcomes of contacts between the police and the public, public perceptions of police behavior during the contact, and the conditions under which police force may be threatened or used. BJS plans to publish this information in reports and reference it when responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justices statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents is 91,663. About 80% of respondents (73,330) will have no police contact and will complete the short interview with an average burden of three minutes. Among the 20% of respondents (18,333) who experienced police contact, the time to ask the detailed questions regarding the nature of the contact is estimated to take an average of 10 minutes. Respondents will be asked to respond to this survey only once during the six month period. The burden estimate is based on data from prior administrations of the PPCS.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 6,722 total burden hours associated with this collection.

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: March 30, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–07555 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4410–18–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on February 18, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between December 2014 and February 2015 designated as Work Items. A complete listing of ASTM Work Items along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to

section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification with the Attorney General was filed on December 9, 2014. A notice was filed in the **Federal Register** on December 31, 2014 (79 FR 78908).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–07527 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—High Density Packaging User Group International Inc.

Notice is hereby given that, on February 23, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), High Density Packaging User Group International, Inc. (''HDPUG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nokia Networks, Oulu, FINLAND; and Safran, Eragny-sur-Oise, FRANCE, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDPUG intends to file additional written notifications disclosing all changes in membership.

On September 14, 1994, HDPUG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on October 31, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 16, 2014 (79 FR 74766).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–07528 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1110–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval for New Collection; FBI National Academy: United States Holocaust Memorial's Law Enforcement and Society Questionnaire

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Curriculum Management Section (CMS) 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 proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until June 1, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Keith Shirley, Unit Chief, Evaluation and Assessment Unit, Training Division, FBI Academy, Federal Bureau of Investigation, Quantico, Virginia 22135, (phone 703–632–3025).

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 Federal Bureau of Investiagtion, 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:* Approval of a New Collection.

2 *The Title of the Form/Collection:* FBI National Academy: United States Holocaust Museum's Law Enforcement and Society Questionnaire.

3 *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None given.

4 *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* FBI National Academy students that represent state and local police and sheriffs' departments, military police organizations, and federal law enforcement agencies from the United States and over 150 foreign nations. *Brief Abstract:* This collection is requested by FBI National Academy on behalf of the United States Holocaust Memorial Museum (USHMM). As part of the FBI National Academy's 10-week training, law enforcement professionals attend a guided tour at the United States Holocaust Memorial Museum lead by the Law Enforcement and Society program (LEAS). The purpose of the tour is to allow law enforcement officers to examine the role of the law enforcement profession and how it played in the Holocaust.

The purpose of the proposed data collection is to gather feedback from FBI National Academy students about their experience with LEAS during the tour. The results will help determine if the LEAS program is meeting its goals and objectives to better serve future law enforcement professionals participating in the FBI National Academy. In addition, the proposed data collection will be used to ensure the presentations and educational material is current and applicable.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Approximately 1,000 FBI National Academy students per year

will receive the questionnaire, and the average time to complete will be about 15 minutes. (The number of students is based on appropriate number of students from fiscal years 2012 -2013). Though we would like a 100% response rate, we anticipate a 75% response rate of those surveyed (or 750); with 25% of the students not responding to the questionnaire.

6 *An estimate of the total public burden (in hours) associated with the collection:* Given that the approximately 75% of those surveyed (or 750) will respond, the total public burden for completing the questionnaire is 187 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: March 30, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–07554 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4410–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on March 9, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Achmea B.V., Zeist, THE NETHERLANDS; Aoyama Gakuin University, Tokyo, JAPAN; Data-Harmonizing, LLC, Littleton, CO; Dividend Group Corp., Toronto, CANADA; Eon Consulting (Pty) Ltd., Midrand, SOUTH AFRICA; Exostrategies, Inc., Woodland, CO; Exxon Mobil Corporation, Houston, TX; In2itive LLC, Alexandria, VA; Link Consulting, S.A., Lisbon, PORTUGAL; Ministerie van Financien (Belastingdienst), Den Haag, THE NETHERLANDS; Origin Energy, Sydney, AUSTRALIA; Osrodek Studiow nad Cyfrowym Panstwem, Lodz, POLAND, Salesforce.com, Inc., San Francisco, CA; Sensedia, Campinas, BRAZIL; SimVentions, Inc., Fredericksburg, VA; Southwest Research Institute, San Antonio, TX; and State Farm Mutual Automobile Insurance Company, Bloomington, IL, have been added as parties to this venture.

Also, DARYUS Consulting & Education Center, Sao Paolo, BRAZIL; IB Solutions, Inc., Calgary, CANADA; Motorola Solutions Inc., Schaumburg, IL; Synthetic Spheres Ltd., Solihull, UNITED KINGDOM; and UDEF–IT, L.L.C., New Smyrna Beach, FL, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on November 19, 2014. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 16, 2014 (79 FR 74767).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–07524 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 2013–07, Stream Speciation Update

Notice is hereby given that, on February 23, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum Project No. 2013–07, Stream Speciation Update (''PERF Project No. 2013–07'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ExxonMobil Research and Engineering Company, Fairfax, VA; Chevron U.S.A., Inc., San Ramon, CA; BP Products North America Inc., Naperville, IL; and Shell Global Solutions (US) Inc., Houston, TX. The general area of PERF Project No. 2013–07's planned activity is, through cooperative research efforts, to explore whether sufficient changes in refinery stream compositions have occurred to warrant updating the existing PERF report (API, Refinery Stream Speciation, Publication Number 4723, November 2002). If justified, the project will consider utilizing a combination of Participant data already existing (blinded and de-identified) and/or publicly available company data to update the existing PERF report.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–07526 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on March 10, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IEEE has provided an updated list of 60 new standards that have been initiated and 45 existing standards that are being revised. More detail regarding these changes can be found at:

http://standards.ieee.org/about/sba/jun2014.html

http://standards.ieee.org/about/sba/aug2014.html
http://standards.ieee.org/about/sba/oct2014.html
http://standards.ieee.org/about/sba/dec2014.html
http://standards.ieee.org/about/sba/feb2014.html.

On February 8, 2015, the IEEE Board of Directors approved an update of the IEEE patent policy standards for development, scheduled to become effective on March 15, 2015. The updated policy is available at *http://standards.ieee.org/develop/policies/bylaws/approved-changes.pdf* and, from the effective date, will be available at *http://standards.ieee.org/develop/policies/bylaws/sec6-7.html*.

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on March 26, 2014. A notice was filed in the **Federal Register** pursuant to Section 6(b) of the Act on April 30, 2014 (79 FR 24450).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–07525 Filed 4–1–15; 8:45 am]

BILLING CODE CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Reintegration of Ex-Offenders-Adult Reporting System, 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)] (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 the extension of the currently approved reporting and recordkeeping system to support the Reintegration of Ex-Offenders-Adult (RExO-Adult) grants, which expires on May 31, 2015.

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: 1025–0455.

DATES: Submit written comments to the office listed in the addresses section below on or before June 1, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Annie Leonetti, Division of Youth Services—RExO, Room N–4508, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2746 (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: 202–693–3113. Email: *Leonetti.Ann@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In applying for the Reintegration of Ex-Offender-Adult grants, applicants agree to submit participant data and quarterly aggregate reports for individuals who receive services through RExO-Adult programs and their partnerships with American Job Centers, local Workforce Investment Boards, employment providers, the criminal justice system, and local housing authorities. The reports include aggregate data on demographic characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, they summarize data on participants who received employment and placement services, housing assistance, mentoring, and other services essential to reintegrating ex-offenders through RExO-Adult programs.

The Department requests an extension of the currently approved information collection to meet the reporting and record-keeping requirements of the Reintegration of Ex-Offenders-Adult grants through an ETA-provided, Web-based Management Information System (MIS). In addition to reporting participant information and performance-related outcomes, RExO-Adult grantees demonstrate their ability to establish effective partnerships with the criminal justice system, local Workforce Investment Boards, local housing authorities, and other partner agencies. They also document the cost effectiveness of their projects. The MIS reporting and record-keeping system incorporates each of these aspects necessary for program evaluation.

This information collection maintains a reporting and record-keeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold RExO-Adult grantees appropriately accountable for the Federal funds they receive, including common performance measures, and to allow the Department to fulfill its oversight and management responsibilities.

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;
- Valuate 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 with Changes—additional data elements.
- *Title of Collection:* Reintegration of Ex-offenders-Adult Reporting System.
- *Form(s):* Quarterly Performance Report and Quarterly Narrative Report.
- *OMB Control Number:* 1205–0455.

- *Affected Public:* Faith-Based and Community Organizations and State and Local Criminal Justice and Workforce Development Agencies.
- *Estimated Number of Respondents:* 40 Grantees.
- *Frequency:* Quarterly.
- *Total Estimated Annual Responses:* 160.
- *Estimated Average Time per Response:* 1.8 hours.
- *Estimated Total Annual Burden Hours:* 15,245.
- *Total Estimated Annual Other Cost Burden:* $0.

ESTIMATED TOTAL BURDEN HOURS

Form/activity	Total respondents	Frequency	Total annual response	Average time per response (hours)	Total annual burden hours
Participant Data Collection	40	Continual	5,625	1.8	10,125
Quarterly narrative progress report	40	Quarterly	160	16	2,560
Quarterly performance report	40	Quarterly	160	16	2,560
Totals	40		5,945		15,245

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. 2015–07576 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4510–FT–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–033]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 4, 2015. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: *request.schedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the

temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Office of the Secretary of Defense (DAA–0330–2015–0002, 2 items, 2 temporary items). Records relating to planning and managing events including budget, contract, and advertisement files.

2. Department of Defense, Office of the Secretary of Defense (DAA–0330–2015–0003, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to wounded soldiers recovery programs including personal identifiers, limited injury and medical information, and duty status.

3. Department of Defense, Office of the Secretary of Defense (DAA–0330–2015–0004, 4 items, 4 temporary items). Records relating to injury and unemployment compensation programs including agreements, invoices, and general claim files.

4. Department of Defense, National Reconnaissance Office (N1–525–12–1, 5 items, 5 temporary items). Administrative records including records relating to human resources, building maintenance, and records management.

5. Department of Health and Human Services, Indian Health Service (DAA–0513–2015–0001, 1 item, 1 temporary item). Internal requests for legal opinions, copies of responses, and background materials.

6. Department of Homeland Security, Transportation Security Administration (DAA–0560–2013–0007, 5 items, 5 temporary items). Applications, case files, and other records related to a program that allows airports to use private security companies for passenger screening.

7. Department of Homeland Security, Transportation Security Administration (DAA–0560–2013–0010, 5 items, 5 temporary items). Records related to a training and assessment program for screeners of checked baggage and passenger checkpoints.

8. Department of Homeland Security, Transportation Security Administration (DAA–0560–2014–0001, 3 items, 3 temporary items). Review and assessment reports of the Explosives Operations Division.

9. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (DAA–0436–2012–0008, 3 items, 1 temporary item). Non-executive meeting minutes. Proposed for permanent retention are executive meeting minutes and formal policies and operating procedures.

10. Department of Justice, Drug Enforcement Administration (DAA–0170–2015–0002, 1 item, 1 temporary item). Records received in the course of an investigation upon which no further action is taken.

11. Department of the Navy, U.S. Marine Corps (DAA–0127–2013–0028, 1 item, 1 temporary item). Master files of an electronic information system used to collect and manage intelligence images.

12. Department of Veterans Affairs, Veterans Health Administration (DAA–0015–2015–0004, 36 items, 34 temporary items). Records of a research program including project applications and approvals, research data, facility oversight records, and patent records. Proposed for permanent retention are congressional relations files and briefing records.

13. Environmental Protection Agency, Agency-wide (DAA–0412–2015–0002, 1 item, 1 temporary item). Master files of an electronic information system used to track cases related to internal labor and employee relations.

14. National Archives and Records Administration, Government-wide (DAA–GRS–2014–0001, 3 items, 2 temporary items). General Records Schedule for email records. Proposed for permanent retention are email records of senior-level agency officials. A copy of the full review packet may be found on the National Archives Records Express blog (*http://blogs.archives.gov/records-express/*). A public meeting to solicit comments will be announced at a later date in the **Federal Register**.

15. Peace Corps, Director's Office (DAA–0490–2015–0001, 3 items, 3 temporary items). Records of the Office of Compliance including records used to capture and track corrective actions and recommendations. Also included are trend analysis data and working files.

Dated: March 27, 2015.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2015–07512 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Submission for OMB Review, Comment Request, Proposed Collection: Museums for All program

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB Review, Comment Request

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the CONTACT section below on or before May 1, 2015.

OMB is particularly interested in comments that help the agency to:

- 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.

ADDRESSES: Christopher J. Reich, Senior Advisor, Institute of Museum and Library Services, 1800 M St. NW., 9th Floor, Washington, DC 20036. Mr. Reich can be reached by Telephone: 202–653–4685, Fax: 202–653–4608, or by email at *creich@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. The Institute's mission is to inspire libraries and museums to advance innovation, learning and civic engagement. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development. IMLS is responsible for identifying national needs for and trends in museum, library, and information services; measuring and reporting on the impact and effectiveness of museum, library and information services throughout the United States, including programs conducted with funds made available by IMLS; identifying, and disseminating information on, the best practices of such programs; and developing plans to improve museum, library and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks (20 U.S.C. Chapter 72, 20 U.S.C. § 9108).

The purpose of this collection is to support *Museums for All,* a voluntary program to increase access to museums for underserved audiences. Through *Museums for All,* museums allow Electronic Benefit Transfer (EBT) card holders to receive reduced-price admission to their facilities. This information collection will obtain data from participating museums necessary to administer the program, such as institution contact information and a staff person to administer the program. Because this is a new program, additional information will be collected to assess implementation of the program components, the efficacy of Agency supplied materials, and the impact of the program.

Current Actions: This notice proposes clearance of the *Museums for All* program. The 60-day notice for the *Museums for All* program, was published in the **Federal Register** on November 21, 2014, (FR vol. 79, No. 225, pgs. 69538–69539). The agency has taken into consideration the one comment that was received under this notice.

Agency: Institute of Museum and Library Services.

Title: Museums for All.

OMB Number: To Be Determined.

Affected Public: The target population is museums that choose to participate in the *Museums for All* program.

Number of Respondents: 125 in first year (anticipated).

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 60 minutes.

Estimated Total Annual Burden: 125 hours (that is 60 minutes per respondent times 125 respondents equal 7,500 minutes or 125 hours).

Total Annualized capital/startup costs: n/a.

Total Annual costs: $2,663.75 (125 respondents times 1 hour times $21.31/hour equals $2,663.75).

Contact: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: March 30, 2015.

Kim A. Miller,

Management Analyst, Office of Planning, Research, and Evaluation.

[FR Doc. 2015–07579 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 7036–01–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Submission for OMB Review, Comment Request, Proposed Collection: Let's Move! Museums & Gardens Program

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB Review, Comment Request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **CONTACT** section below on or before May 1, 2015.

OMB is particularly interested in comments that help the agency to:

- 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.

ADDRESSES: Christopher J. Reich, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4685. Email: *creich@imls.gov* or by teletype (TTY/TDD) for persons with hearing difficulty at (202) 653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. The Institute's mission is to inspire libraries and museums to advance innovation, learning and civic engagement. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development. IMLS is responsible for identifying national needs for and trends in museum, library, and information services; measuring and reporting on the impact and effectiveness of museum, library and information services throughout the United States, including programs conducted with funds made available by IMLS; identifying, and disseminating information on, the best practices of such programs; and developing plans to improve museum, library and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

Abstract: The purpose of this collection is to support a program to provide a targeted public health message in museums and gardens. Using the registration form for *Let's Move!* Museums & Gardens program

(previously known as Let's Move Museums, Let's Move Gardens), IMLS will collect information about participant museums' exhibits, programs, and food service operations that are targeted at fighting childhood obesity. The information will be used to confirm program participation requirements and to share best practices in public health programs.

Current Actions: This notice proposes clearance of the *Let's Move!* Museums & Gardens registration form. The 60-day notice for the *Let's Move!* Museums & Gardens information collection was published in the **Federal Register** on December 5, 2014, (FR vol. 79, No. 234, pgs. 72214–72215). No comments were received.

Agency: Institute of Museum and Library Services.

Title: Let's Move! Museums *&* Gardens.

OMB Number: 3137–0084.

Frequency: Annual.

Affected Public: Museums, state, local, tribal government and not-for-profit institutions.

Number of Respondents: 50.

Estimated Time per Respondent: 0.17 hours.

Total Annual Costs to Respondents: $164.

Total Annualized to Federal Government: $4,615.

Contact: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: March 30, 2015.

Kim A. Miller,

Management Analyst, Office of Planning, Research, and Evaluation.

[FR Doc. 2015–07611 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 7036–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74598; File No. SR–BATS–2015–24]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees for the BATS One Market Data Product

March 27, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the market data section of its fee schedule to: (i) Establish a Digital Media Enterprise Fee for the BATS One Feed; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise fee.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the market data section of its fee schedule to: (i) Establish a Digital Media Enterprise Fee for the BATS One Feed; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise fee.[5]

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed[6] as well as published proposed rule changes to establish related fees.[7] The BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on BZX and its affiliated exchanges[8] and for which the BATS Exchanges report quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[9] The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). In addition, the BATS One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels (''BATS One Premium Feed'').

BATS One Digital Media Enterprise Fee

The Exchange proposes to amend its fee schedule to establish a Digital Media Enterprise Fee of $15,000 per month for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 7 CFR 240.19b–4(f)(2).

[5] The Exchange notes that the date of the fee schedule was amended to March 17, 2015 in a previously filed proposed rule change. *See* SR–BATS–2015–23 (filed March 17, 2015).

[6] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (''BATS One Approval Order'').

[7] *See* Securities Exchange Act Release Nos. 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09); *and* 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11) (''BATS One Fee Proposals'').

[8] BZX's affiliated exchanges are EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), and BATS Y-Exchange, Inc. (''BYX'', together with EDGX, EDGA, and BZX, the ''BATS Exchanges''). On January 23, 2014, BATS Global Markets, Inc. (''BGMI''), the former parent company of the Exchange and BYX, completed its business combination with Direct Edge Holdings LLC, the parent company of EDGA and EDGX. *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039). Upon completion of the business combination, DE Holdings and BGMI each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.'' and BGMI changed its name to ''BATS Global Markets Holdings, Inc.''

[9] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

the BATS One Summary Feed and $25,000 per month for the BATS One Premium Feed. As an alternative to User fees,[10] a recipient firm may purchase a monthly Digital Media Enterprise license to receive the BATS One Feed from an External Distributor [11] to distribute to an unlimited number of Professional and Non-Professional Users [12] for viewing via television, Web sites, and mobile devices for informational and non-trading purposes only without having to account for the extent of access to the data or the report the number of Users to the Exchange. The Digital Media Enterprise Fee would be in addition to the Data Consolidation Fee.[13]

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The Exchange proposes a non-substantive change to the description of the BATS One Enterprise fee. The fee schedule currently states that, ''[a]s an alternative to User fees, a recipient firm may purchase a monthly Enterprise Fee to receive the BATS One Feed from an External Distributor for an unlimited number of Professional and Non-Professional Users.'' The Exchange proposes to amend this sentence in two ways. The first amendment is to state that a recipient firm may purchase a monthly Enterprise license, rather than Enterprise fee, as the term ''license'' is a more accurate description. The second is to specify that the recipient firm purchasing a monthly enterprise license does so to distribute the BATS One Feed to an unlimited number of Professional and Non-Professional Users.

2. Statutory Basis

BATS One Digital Media Enterprise Fee

The Exchange believes that the proposed Digital Media Enterprise Fee for the BATS One Feed is consistent with Section 6(b) of the Act,[14] in general, and Section 6(b)(4) of the Act,[15] in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [16] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[17] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fee is equitable and not unfairly discriminatory because it will apply uniformly to market data vendors, television broadcasters, Web site and mobile service providers. The Exchange believes it is reasonable to establish a lower cost fee structure that is designed to facilitate broader media distribution of the BATS One Data Feed for informational purposes because it will benefit investors generally.

In establishing the Digital Media Enterprise Fee, the Exchange recognizes that there is demand for a more seamless and easier-to-administer data distribution mode that takes into account the expanded variety of media and communication devices that investors utilize today. The Exchange believes the Digital Media Enterprise Fee will be easy to administer because data recipients that purchase it would not be required to differentiate between Professional and Non-Professional Users, account for the extent of access to the data, or report the number of Users. This is a significant reduction on a recipient firm's administrative burdens and is a significant value to investors. For example, a television broadcaster could display the BATS One Feed data during market-related programming and on its Web site or allow viewers to view the data via their mobile devices, creating a more seamless distribution model that will allow investors more choice in how they receive and view market data, all without having to account for and/or measure who accesses the data and how often they do so.

The proposed Digital Media Enterprise Fee is equitable and reasonable because it will also enable recipient firms to more widely distribute data from the BATS One Feed to investors for informational purposes at a lower cost than is available today. For example, a recipient firm may purchase an Enterprise license in the amount of $50,000 per month for the BATS One Summary Feed and $100,000 per month for the BATS One Premium Feed to receive the BATS One Feed from an External Distributor for an unlimited number of Professional and Non-Professional Users, which is greater than the Digital Media Enterprise fee proposed herein. The Exchange also believes the amount of the Digital Enterprise [sic] is reasonable as compared to the existing Enterprise fees discussed above because the distribution of BATS One Feed data is limited to television, Web sites, and mobile devices for informational purposes only, while distribution of the BATS One Feed data pursuant to an Enterprise license contains no such limitation. The Exchange also believes that the proposed Digital Media Enterprise fee is equitable and reasonable because it is less than similar fees charged by other exchanges.[18]

[10] The Exchange assesses a monthly fee for Professional Users of $10.00 per User for receipt of the BATS One Summary Feed or $15.00 per User who elects to also receive the BATS One Premium Feed. Non-Professional Users are assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user for the BATS One Premium Feed. External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. *See* BATS One Fee Proposals, *supra* note 7.

[11] As defined in the Exchange's fee schedule, an External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.

[12] As defined in the Exchange's fee schedule, a User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. A Non-Professional User of an Exchange Market Data product is a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

[13] The Data Consolidation Fee is $1,000 per month and is designed to reflect the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. *See* BATS One Fee Proposals, *supra* note 7.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78k–1.

[17] *See* 17 CFR 242.603.

[18] The Nasdaq Stock Market offers proprietary data products for distribution over the internet and

The Exchange has taken into consideration its affiliated relationship with BYX, EDGA, and EDGX in proposing the Digital Media Enterprise fee to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. As discussed in in the BATS One Fee Proposal,[19] any entity may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed, and offer a data feed with the same information included in the BATS One Feed to sell and distribute it to its clients with no greater cost than the Exchange.

To enable such competition, the Exchange is offering the Digital Media Enterprise license for the BATS One Feed on terms that a subscriber of the underlying feeds could offer a competing product if it so chooses. The BATS One Feed is comprised of data included in EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.[20] Currently, an External Distributor could create a competing product to the BATS One Premium Feed [21] by purchasing each of these depth of book products from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $12,500 per month.[22] An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale,[23] and then perform their own aggregation and consolidation function. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $5,000 per month.[24] The Exchange proposes to charge a Digital Media Enterprise Fee ($15,000 per month for the BATS One Summary Feed and $25,000 per month for the BATS One Premium Feed, plus the $1,000 per month Data Consolidation fee) that exceeds the combined External Distributor fees for each of the individual feeds listed above to ensure that vendors could compete with the Exchange by creating the same product as the BATS One Feed to sell to their clients at no greater cost than the Exchange.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission's reliance upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data.

In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [25]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[26] In addition, the existence of alternatives to the BATS One Feed, including real-time consolidated data, free delayed consolidated data, and proprietary last sale data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and users can elect such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach, and the Exchange incorporates by reference into this proposed rule change its affiliate's [sic] analysis of this topic in another rule filing.[27]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The Exchange believes that the proposed change to the BATS One Enterprise Fee is consistent with Section 6(b) of the Act,[28] in general, and Section 6(b)(4) of the Act,[29] in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The proposal to amend the description of the Enterprise fee within the fee schedule is equitable and reasonable because the changes are designed to clarify the fee schedule and avoid potential investor confusion. The proposed changes do not amend the amount or application of the BATS One Enterprise fee. The proposed changes are also non-discriminatory as they would apply to all recipient firms uniformly [sic].

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, as amended.

television under alternative fee schedules that are subject to maximum fee of $50,000 per month. *See* Nasdaq Rule 7039(b). The NYSE charges a Digit Media Enterprise fee of $40,000 per month for the NYSE Trade Digital Media product. *See* Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR–NYSE–2013–23).

[19] *See* BATS One Fee Proposals, *supra* note 7.

[20] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

[21] Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

[22] The monthly External Distributor fee is $2,500 per month for EDGX Depth, $2,500 per month for EDGA Depth, $2,500 for BYX Depth, and $5,000 for BZX Depth.

[23] *See supra* note 6. *See also* BATS Rule 11.22(d) and (g).

[24] The monthly External Distributor fee is $1,250 per month for EDGX Top and EDGX Last Sale (as proposed herein), free for EDGA Top and EDGA Last Sale, $1,250 for BYX Top and BYX Last Sale, and $2,500 for BZX Top and BZX Last Sale. *See* BATS One Fee Proposals, *supra* note 7.

[25] *NetCoalition,* 615 F.3d at 535.

[26] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[27] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (November 17, 2010) (SR–NYSEArca–2010–97).

[28] 15 U.S.C. 78f.

[29] 15 U.S.C. 78f(b)(4).

BATS One Digital Media Enterprise Fee

The BATS One Feed Digital Media Enterprise fee will enhance competition because it provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.[30] The Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.[31] Nasdaq offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view of last sale information similar to the BATS One Feed.[32] The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Finally, although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the BATS One Feed, the Exchange is not the exclusive distributor of the aggregated and consolidated information that would compose the BATS One Feed. The Exchange has taken into consideration its affiliated relationship with BYX, EDGA, and EDGX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. As discussed in in [sic] the BATS One Fee Proposal,[33] any entity may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed, and offer a data feed with the same information included in the BATS One Feed to sell and distribute it to its clients with no greater cost than the Exchange.

To enable such competition, the amount of the proposed Digital Media Enterprise license compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The amount of the proposed Digital Media Enterprise license, coupled with the Data Consolidation Fee, is not lower than the cost to a vendor of receiving the underlying data feeds to create a competing product. Therefore, the amount of the proposed Digital Media Enterprise license the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The proposal to amend the description of the Enterprise fee within the fee schedule will not have any impact on completion [sic]. The proposed changes are designed to clarify the fee schedule and avoid potential investor confusion and do not amend the amount or application of the BATS One Enterprise fee.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [34] and paragraph (f) of Rule 19b–4 thereunder.[35] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2015–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2015–24. 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

[30] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF'')); Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades (''BQT'') Data Feed); *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[31] *Id.*

[32] *Id.*

[33] *See* BATS One Fee Proposals, *supra* note 7.

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f).

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 20549–1090, 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–2015–24, and should be submitted on or before April 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07519 Filed 4–1–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74595; File No. SR–NYSEArca–2015–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Innovator IBD® 50 Fund Under NYSE Arca Equities Rule 8.600

March 27, 2015.

On January 30, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Innovator IBD® 50 Fund (''Fund''). On February 12, 2015, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposal in its entirety. The proposed rule change was published for comment in the **Federal Register** on February 20, 2015.[3] No comments on the proposal have been received. This order approves the proposed rule change, as modified by Amendment No. 1.

I. The Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by Academy Funds Trust (the ''Trust''), an open-end management investment company.[4] The Fund will issue and sell Shares only in ''Creation Unit'' size at the NAV next determined after receipt, on any business day, of an order in proper form.[5]

The investment adviser to the Fund will be Innovator Management LLC (the ''Adviser''). Penserra Capital Management LLC will be the Fund's sub-adviser (''Sub-Adviser''). Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer. The Adviser is not affiliated with a broker-dealer. The Sub-Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition of or changes to the Fund's portfolio.[6] U.S. Bank, N.A.(the ''Administrator'' or ''Custodian'') will serve as the administrator, custodian and transfer agent for the Fund. Quasar Distributors, LLC will be the principal underwriter and distributor of the Shares.

The investment objective of the Fund will be to seek long-term capital appreciation. Under normal circumstances,[7] the Fund will invest at least 80% of its net assets in companies included in the IBD® 50 Index (''Index'') and in U.S. exchange-traded equities.[8] Typically, the Fund will hold U.S. exchange-traded common stocks as well as U.S. exchange-traded master limited partnerships (''MLPs''), real estate investment trusts (''REITs''), royalty trusts and business development companies (''BDCs''). It will invest primarily in U.S. equity securities but may, to a lesser extent, invest in equity securities of foreign companies in both developed and emerging markets, generally through American depositary receipts (''ADRs''). The Fund may invest in companies of any size.

Other Portfolio Holdings. The Fund may invest in money market securities for liquidity and cash management purposes or if the Adviser or Sub-Adviser determines that securities meeting the Fund's investment objective and policies are not otherwise readily available for purchase. Money market securities include (i) short-term U.S. government securities; (ii) commercial paper rated in the highest short-term rating category by a nationally recognized statistical ratings

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74278 (February 13, 2015), 80 FR 9294.

[4] The Trust is registered under the 1940 Act. On October 9, 2014 and on December 19, 2014, the Trust filed with the Commission amendments to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and under the 1940 Act relating to the Fund (File Nos. 333–146827 and 811–22135) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 31248 (September 9, 2014) (File No. 812–14308) (''Exemptive Order'').

[5] A Creation Unit consists of 25,000 Shares, and the size of a Creation Unit is subject to change. *See* Notice, *supra* note 3, 80 FR at 9296.

[6] Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Exchange states that, in the event (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[7] The term ''under normal circumstances'' means, without limitation, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[8] The Index is a computer-generated stock index published by Investor's Business Daily® (''IBD®''). IBD® uses proprietary fundamental and technical ratings to compile what IBD® considers the 50 leading growth companies that trade on U.S. national securities exchanges. Companies included in the Index must meet minimum earnings, sales, profit margin, volume and technical requirements.

organization (''NRSRO''), such as Standard & Poor's or Moody's, or determined by the Adviser or Sub-Adviser to be of comparable quality at the time of purchase; (iii) short-term bank obligations (certificates of deposit, time deposits and bankers' acceptances) of U.S. domestic banks, foreign banks and foreign branches of domestic banks, and commercial banks with assets of at least $1 billion as of the end of their most recent fiscal year; (iv) repurchase agreements involving such securities; and (v) money market mutual funds.

The Fund may invest in securities of other investment companies (other than BDCs), including shares of the following: (1) Exchange-traded funds (''ETFs''), unit investment trusts, and closed-end investment companies, each of which will be listed and traded on a U.S. national securities exchange, and (2) non-exchange-listed open-end investment companies.

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's rules 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 also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Quotation and last-sale information for the Shares and U.S. exchange-listed equity securities will be available via the Consolidated Tape Association (''CTA'') high-speed line, and will be available from the national securities exchange on which they are listed.[10] The Exchange represents that intra-day and closing price information relating to the investments of the Fund will be available from major market data vendors and from securities exchanges, as applicable.[11] Further, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), based on current information regarding the value of the securities and other assets in the Disclosed Portfolio, will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[12] The Custodian, through the National Securities Clearing Corporation (''NSCC'') will make available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit[13] (based on information at the end of the previous business day) for the Fund.[14] In addition, a basket composition file, which includes the security names and share quantities (as applicable) required to be delivered in exchange for Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC.[15] The NAV of the Fund will be calculated at the close of regular trading (ordinarily 4:00 p.m. Eastern time) every day the New York Stock Exchange is open for trading.[16] Information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.[17] Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.[18]

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share of the Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, trading in the Shares would be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which set forth circumstances under which trading in the Shares may be halted. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[19] Further, the Commission notes that the Adviser, as the Reporting Authority, that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio.[20] In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded equity securities from markets and other entities that are members of Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.[21] The Exchange represents that it prohibits the distribution of material non-public information by its employees. The Exchange represents that the Adviser is not a registered broker-dealer and is not affiliated with any broker-dealers. The Exchange represents that the Sub-Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition of or changes to the Fund's portfolio.[22]

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] *See* Notice, *supra* note 3, 80 FR at 9298.

[11] *See id.* Price information regarding money market mutual funds will be available from on-line sources and from the Web site for the applicable fund. *See id.*

[12] The Exchange understands that several major market data vendors display or make widely available Portfolio Indicative Values taken from CTA or other data feeds. *See id.,* n.26.

[13] The ''Fund Deposit'' is the consideration for purchase of Creation Units of the Fund, which generally will consist of the in-kind deposit of a designated portfolio of equity securities and an amount of cash. *See id.* at 9296–97.

[14] *See id.* at 9297.

[15] *See id.* at 9298.

[16] *See id.* at 9296.

[17] *See id.* at 9298.

[18] *See id.*

[19] These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. *See id.*

[20] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[21] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[22] The Exchange also represents that, in the event that (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Additionally, in support of its proposal, the Exchange has made the following representations:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, underlying exchange-traded equity securities, from such markets and other entities.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

(6) The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 [23] under the Act, as provided by NYSE Arca Equities Rule 5.3.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets (calculated at the time of investment) in assets deemed illiquid by the Adviser, consistent with Commission guidance.

(8) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

(9) Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(10) The Fund will not invest in options, futures contracts or swaps agreements.

(11) The Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

This approval order is based on all of the Exchange's representations and description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2015–04), 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.[24]

Brent J. Fields,

Secretary.

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to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. *See* Notice, *supra* note 3, 80 FR at 9300.

[23] 17 CFR 240.10A–3.

[24] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74600; File No. SR–EDGA–2015–14]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees for the BATS One Market Data Product

March 27, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the market data section of its fee schedule to: (i) Establish a Digital Media Enterprise Fee for the BATS One Feed; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise fee.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 market data section of its fee schedule to: (i) Establish a Digital Media Enterprise Fee for the BATS One Feed; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise fee.

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed [5] as well as published proposed rule changes to establish related fees.[6] The BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on EDGA and its affiliated exchanges [7] and for which the BATS Exchanges report quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[8] The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). In addition, the BATS One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels (''BATS One Premium Feed'').

BATS One Digital Media Enterprise Fee

The Exchange proposes to amend its fee schedule to establish a Digital Media Enterprise Fee of $15,000 per month for the BATS One Summary Feed and $25,000 per month for the BATS One Premium Feed. As an alternative to User fees,[9] a recipient firm may purchase a monthly Digital Media Enterprise license to receive the BATS One Feed from an External Distributor [10] to distribute to an unlimited number of Professional and Non-Professional Users [11] for viewing via television, Web sites, and mobile devices for informational and non-trading purposes only without having to account for the extent of access to the data or the report the number of Users to the Exchange. The Digital Media Enterprise Fee would be in addition to the Data Consolidation Fee.[12]

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The Exchange proposes a non-substantive change to the description of the BATS One Enterprise fee. The fee schedule currently states that, ''[a]s an alternative to User fees, a recipient firm may purchase a monthly Enterprise Fee to receive the BATS One Feed from an External Distributor for an unlimited number of Professional and Non-Professional Users.'' The Exchange proposes to amend this sentence in two ways. The first amendment is to state that a recipient firm may purchase a monthly Enterprise license, rather than Enterprise fee, as the term ''license'' is a more accurate description. The second is to specify that the recipient firm purchasing a monthly enterprise license does so to distribute the BATS One Feed to an unlimited number of Professional and Non-Professional Users.

2. Statutory Basis

BATS One Digital Media Enterprise Fee

The Exchange believes that the proposed Digital Media Enterprise Fee for the BATS One Feed is consistent with Section 6(b) of the Act,[13] in general, and Section 6(b)(4) of the Act,[14] in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [15] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[16] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the

[5] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (''BATS One Approval Order'').

[6] *See* Securities Exchange Act Release Nos. 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09); *and* 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11) (''BATS One Fee Proposals'').

[7] EDGA's affiliated exchanges are BATS Exchange, Inc. (''BZX''), BATS Y-Exchange, Inc. (''BYX''), and EDGX Exchange, Inc. (''EDGX'', together with EDGA, BZX, and BYX, the ''BATS Exchanges''). On January 31, 2014, Direct Edge Holdings LLC (''DE Holdings''), the former parent company of the Exchange and EDGX, completed its business combination with BATS Global Markets, Inc., the parent company of BZX and BYX. *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43, SR–EDGA–2014–34). Upon completion of the business combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.''

[8] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

[9] The Exchange assesses a monthly fee for Professional Users of $10.00 per User for receipt of the BATS One Summary Feed or $15.00 per User who elects to also receive the BATS One Premium Feed. Non-Professional Users are assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user for the BATS One Premium Feed. External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. *See* BATS One Fee Proposals, *supra* note 6.

[10] As defined in the Exchange's fee schedule, an External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.

[11] As defined in the Exchange's fee schedule, a User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. A Non-Professional User of an Exchange Market Data product is a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

[12] The Data Consolidation Fee is $1,000 per month and is designed to reflect the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. *See* BATS One Fee Proposals, *supra* note 6.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78k–1.

[16] *See* 17 CFR 242.603.

amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fee is equitable and not unfairly discriminatory because it will apply uniformly to market data vendors, television broadcasters, Web site and mobile service providers. The Exchange believes it is reasonable to establish a lower cost fee structure that is designed to facilitate broader media distribution of the BATS One Data Feed for informational purposes because it will benefit investors generally.

In establishing the Digital Media Enterprise Fee, the Exchange recognizes that there is demand for a more seamless and easier–to-administer data distribution mode that takes into account the expanded variety of media and communication devices that investors utilize today. The Exchange believes the Digital Media Enterprise Fee will be easy to administer because data recipients that purchase it would not be required to differentiate between Professional and Non-Professional Users, account for the extent of access to the data, or report the number of Users. This is a significant reduction on a recipient firm's administrative burdens and is a significant value to investors. For example, a television broadcaster could display the BATS One Feed data during market-related programming and on its Web site or allow viewers to view the data via their mobile devices, creating a more seamless distribution model that will allow investors more choice in how they receive and view market data, all without having to account for and/or measure who accesses the data and how often they do so.

The proposed Digital Media Enterprise Fee is equitable and reasonable because it will also enable recipient firms to more widely distribute data from the BATS One Feed to investors for informational purposes at a lower cost than is available today. For example, a recipient firm may purchase an Enterprise license in the amount of $50,000 per month for the BATS One Summary Feed and $100,000 per month for the BATS One Premium Feed to receive the BATS One Feed from an External Distributor for an unlimited number of Professional and Non-Professional Users, which is greater than the Digital Media Enterprise fee proposed herein. The Exchange also believes the amount of the Digital Enterprise [sic] is reasonable as compared to the existing Enterprise fees discussed above because the distribution of BATS One Feed data is limited to television, Web sites, and mobile devices for informational purposes only, while distribution of the BATS One Feed data pursuant to an Enterprise license contains no such limitation. The Exchange also believes that the proposed Digital Media Enterprise fee is equitable and reasonable because it is less than similar fees charged by other exchanges.[17]

The Exchange has taken into consideration its affiliated relationship with EDGX, BYX, and BZX in proposing the Digital Media Enterprise fee to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. As discussed in in [sic] the BATS One Fee Proposal,[18] any entity may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed, and offer a data feed with the same information included in the BATS One Feed to sell and distribute it to its clients with no greater cost than the Exchange.

To enable such competition, the Exchange is offering the Digital Media Enterprise license for the BATS One Feed on terms that a subscriber of the underlying feeds could offer a competing product if it so chooses. The BATS One Feed is comprised of data included in EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.[19] Currently, an External Distributor could create a competing product to the BATS One Premium Feed [20] by purchasing each of these depth of book products from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $12,500 per month.[21] An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale,[22] and then perform their own aggregation and consolidation function. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $5,000 per month.[23] The Exchange proposes to charge a Digital Media Enterprise Fee ($15,000 per month for the BATS One Summary Feed and $25,000 per month for the BATS One Premium Feed, plus the $1,000 per month Data Consolidation fee) that exceeds the combined External Distributor fees for each of the individual feeds listed above to ensure that vendors could compete with the Exchange by creating the same product as the BATS One Feed to sell to their clients at no greater cost than the Exchange.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission's reliance upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data.

In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and

[17] The Nasdaq Stock Market offers proprietary data products for distribution over the internet and television under alternative fee schedules that are subject to maximum fee of $50,000 per month. *See* Nasdaq Rule 7039(b). The NYSE charges a Digit Media Enterprise fee of $40,000 per month for the NYSE Trade Digital Media product. *See* Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR–NYSE–2013–23).

[18] *See* BATS One Fee Proposals, *supra* note 6.

[19] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

[20] Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

[21] The monthly External Distributor fee is $2,500 per month for EDGX Depth, $2,500 per month for EDGA Depth, $2,500 for BYX Depth, and $5,000 for BZX Depth.

[22] *See supra* note 5. *See also* BATS Rule 11.22(d) and (g).

[23] The monthly External Distributor fee is $1,250 per month for EDGX Top and EDGX Last Sale (as proposed herein), free for EDGA Top and EDGA Last Sale, $1,250 for BYX Top and BYX Last Sale, and $2,500 for BZX Top and BZX Last Sale. *See* BATS One Fee Proposals, *supra* note 7.

practices that constitute the U.S. national market system for trading equity securities.'' '' [24]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[25] In addition, the existence of alternatives to the BATS One Feed, including real-time consolidated data, free delayed consolidated data, and proprietary last sale data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and users can elect such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach, and the Exchange incorporates by reference into this proposed rule change its affiliate's [sic] analysis of this topic in another rule filing.[26]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The Exchange believes that the proposed change to the BATS One Enterprise Fee is consistent with Section 6(b) of the Act,[27] in general, and Section 6(b)(4) of the Act,[28] in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The proposal to amend the description of the Enterprise fee within the fee schedule is equitable and reasonable because the changes are designed to clarify the fee schedule and avoid potential investor confusion. The proposed changes do not amend the amount or application of the BATS One Enterprise fee. The proposed changes are also non-discriminatory as they would apply to all recipient firms uniformly.

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, as amended.

BATS One Digital Media Enterprise Fee

The BATS One Feed Digital Media Enterprise fee will enhance competition because it provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.[29] The Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.[30] Nasdaq offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view of last sale information similar to the BATS One Feed.[31] The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Finally, although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the BATS One Feed, the Exchange is not the exclusive distributor of the aggregated and consolidated information that would compose the BATS One Feed. The Exchange has taken into consideration its affiliated relationship with EDGX, BYX, and BZX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. As discussed in in the BATS One Fee Proposal,[32] any entity may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed, and offer a data feed with the same information included in the BATS One Feed to sell and distribute it to its clients with no greater cost than the Exchange.

To enable such competition, the amount of the proposed Digital Media Enterprise license compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The amount of the proposed Digital Media Enterprise license, coupled with the Data Consolidation Fee, is not lower than the cost to a vendor of receiving the underlying data feeds to create a competing product. Therefore, the amount of the proposed

[24] *NetCoalition,* 615 F.3d at 535.

[25] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[26] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (November 17, 2010) (SR–NYSEArca–2010–97).

[27] 15 U.S.C. 78f.

[28] 15 U.S.C. 78f(b)(4).

[29] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF''));Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades (''BQT'') Data Feed); *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[30] *Id.*

[31] *Id.*

[32] *See* BATS One Fee Proposals, *supra* note 7.

Digital Media Enterprise license the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The proposal to amend the description of the Enterprise fee within the fee schedule will not have any impact on completion [sic]. The proposed changes are designed to clarify the fee schedule and avoid potential investor confusion and do not amend the amount or application of the BATS One Enterprise fee.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [33] and paragraph (f) of Rule 19b–4 thereunder.[34] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2015–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2015–14. 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 20549–1090, 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–EDGA–2015–14, and should be submitted on or before April 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Brent J. Fields,

Secretary.

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[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74597; File No. SR–NSX–2015–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Connection With the Amended and Restated Certificate of Incorporation of National Stock Exchange Holdings, Inc., the Exchange's Parent Corporation, and the Amended and Restated Certificate of Incorporation of the Exchange

March 27, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2015, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') 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 substantially prepared by the Exchange. The Exchange has designated this rule proposal as ''non-controversial'' pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing the instant rule amendment to effectuate ministerial, non-substantive amendments to (i) the certificate of incorporation of National Stock Exchange Holdings, Inc. (''NSX Holdings''), a Delaware corporation that owns all of the issued and outstanding shares of NSX; and (ii) the certificate of incorporation of NSX. The text of the proposed change to the NSX Holdings certificate of incorporation is attached as Exhibit 5A and the text of the proposed change to the NSX certificate of incorporation is attached as Exhibit 5B.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

statements concerning the purpose of, and statutory 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 is proposing to make ministerial, non-substantive amendments to the certificates of incorporation of NSX Holdings and of NSX. The Exchange is proposing these amendments in order to satisfy the requirements of the Delaware General Corporation Law (the ''DGCL'') and correct technical defects in those documents. The Exchange previously submitted to the Commission (i) a proposed ''Second Amended and Restated Certificate of Incorporation for National Stock Exchange Holdings, Inc.'' (the ''Holdings Amended Certificate''); and (ii) a proposed ''Second Amended and Restated Certificate of Incorporation for National Stock Exchange, Inc.'' (the ''NSX Amended Certificate''). Both of these documents were submitted to the Commission as part of a rule filing seeking approval of a transaction in which NSX Holdings purchased all of the outstanding shares of NSX from the CBOE Stock Exchange, LLC.[5] The Commission granted its approval of the proposed transaction on February 13, 2015[6] and the transaction closed on February 18, 2015.

In connection with filing the Holdings Amended Certificate and the NSX Amended Certificate with the Delaware Secretary of State, the Exchange became aware that the titles of both documents, as filed with and approved by the Commission, were not correct and would not be acceptable for filing. Specifically, the Holdings Amended Certificate was incorrectly titled as the ''Second Amended and Restated Certificate of Incorporation'' because, as described below, a prior amendment to the Holdings certificate of incorporation through a ''Certificate of Amendment to the Certificate of Incorporation'' (the ''Certificate of Amendment'') did not constitute an amendment and restatement of the NSX Holdings certificate of incorporation under the DGCL. Accordingly, as proposed, the Holdings Amended Certificate will be entitled ''Amended and Restated Certificate of Incorporation for National Stock Exchange Holdings, Inc.'' The NSX Amended Certificate will be entitled ''Amended and Restated Certificate of Incorporation of National Stock Exchange, Inc.'' because the Exchange had previously filed with the Delaware Secretary of State an amended and restated certificate of incorporation which would have been deemed a ''second'' amended and restated certificate of incorporation, although it had not been titled as such. The Exchange also proposes to make conforming amendments to the text of each document.

NSX Holdings was incorporated in the State of Delaware on August 19, 2014. The original certificate of incorporation for NSX Holdings was amended on October 2, 2014 with the filing of the Certificate of Amendment with the Delaware Secretary of State. The Certificate of Amendment increased the total number of shares of common stock that NSX Holdings was authorized to issue from 10,000 shares to 100,000 shares with a par value of $0.01 but made no other changes to the certificate of incorporation. Prior to the filing of the Holdings Amended Certificate with the Delaware Secretary of State, the Exchange became aware that, under the DGCL, the document should properly be entitled ''Amended and Restated Certificate of Incorporation'' because it seeks to: (i) Integrate into a single instrument all of the provisions of NSX Holdings' certificate of incorporation and the Certificate of Amendment; and (ii) further amend NSX Holdings' certificate of incorporation.[7] Since NSX Holdings had not previously filed an ''Amended and Restated Certificate of Incorporation'' with the Delaware Secretary of State, but had only filed the Certificate of Amendment increasing the authorized shares that NSX Holdings was permitted to issue, the Holdings Amended Certificate in its present form, as filed with and approved by the Commission, would not be accepted for filing. Accordingly, the Exchange seeks approval for NSX Holdings to modify the form of the Holdings Amended Certificate that it proposes to file with the Delaware Secretary of State by changing the title and making certain conforming amendments in the text of the document. The Exchange also proposes to eliminate references in the introductory paragraph of the Holdings Amended Certificate to the October 2, 2014 amendment of the original certificate of incorporation through the Certificate of Amendment, because such references are not necessary for purposes of the DGCL.

With respect to the NSX Amended Certificate, the Exchange became aware that entitling it the ''Second Amended and Restated Certificate of Incorporation'' was not correct because a document meeting the definition of a second amended and restated certificate of incorporation had previously been filed with the Delaware Secretary of State, even though it had not been specifically entitled as such.[8] On February 18, 2015, the NSX Amended Certificate, in the form approved by the Commission was submitted for filing to the Delaware Secretary of State. The Delaware Secretary of State refused to accept the NSX Amended Certificate unless it was modified to eliminate the reference to it being the ''Second'' Amended and Restated Certificate of Incorporation. The title of the document was changed and conforming modifications were made to the text. The NSX Amended Certificate was accepted by and successfully filed with the Delaware Secretary of State.

Accordingly, the Exchange is proposing to amend the NSX Amended Certificate previously filed with, and approved by, the Commission by entitling the NSX Amended Certificate as the ''Amended and Restated Certificate of Incorporation of National Stock Exchange, Inc.'' and making conforming amendments to the text of the document. In so doing, the Exchange seeks to fully comply with DGCL and with the Exchange Act. The Exchange notes that the proposed changes to the Holdings Amended Certificate and the NSX Amended Certificate are

[5] *See* Securities Exchange Act Release No. 73944 (December 24, 2014), 80 FR 85 (January 2, 2015) (SR–NSX–2014–017).

[6] *See* Securities Exchange Act Release No. 74270 (February 13, 2015), 80 FR 9286 (February 20, 2015) (''Order Granting Approval of Proposed Rule Change in Connection With a Proposed Transaction in Which National Stock Exchange Holdings, Inc. Will Acquire Ownership of the Exchange from the CBOE Stock Exchange, LLC'').

[7] Specifically, Section 245(a) of the DGCL provides that ''[a] corporation may, whenever desired, integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative as a result of there having theretofore been filed with the Secretary of State [one] or more certificates or other instruments . . . and it may at the same time also further amend its certificate of incorporation by adopting a restated certificate of incorporation.''

[8] On December 30, 2011, the Exchange filed an ''Amended and Restated Certificate of Incorporation of National Stock Exchange, Inc.'' with the Delaware Secretary of State. As stated therein, the original Certificate of Incorporation was filed on December 12, 2005 and was restated on June 29, 2006.

ministerial and do not affect the substance of either document.

2. Statutory Basis

The Exchange believes that its rule proposal is consistent with Section 6(b) of the Exchange Act, in general, and Section 6(b)(5) of the Exchange Act, in particular, because the proposed change will align the charter documents of NSX Holdings and of the Exchange with the specific requirements of the DGCL. The Exchange's proposal to make non-substantive changes to the Holdings Amended Certificate and the NSX Amended Certificate furthers the purposes of Section 6(b)(5) of the Act to, among other things, 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 proposed changes are ministerial, do not affect the substance of either document and are necessary to assure that charter documents of NSX Holdings and of the Exchange meet the Delaware statutory requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate for the furtherance of the Act. The proposed rule change is not designed to address any competitive issue in the U.S. securities markets or have any impact on competition in those markets because it is intended to correct technical defects in the form of the certificates of incorporation of NSX Holdings and of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received comments on the proposed rule change from market participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2015–01 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–NSX–2015–01. 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–NSX–2015–01 and should be submitted on or before April 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07518 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; Earth Dragon Resources, Inc.

March 31, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Earth Dragon Resources, Inc. (''Earth Dragon'') because it has not filed a periodic report since it filed its Form 10–Q for the period ending August 31, 2011, filed on October 3, 2012. Earth Dragon's common stock (ticker ''EARH'') is quoted on OTC Link (previously ''Pink Sheets'') operated by OTC Markets Group, Inc.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Earth Dragon.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Earth Dragon is suspended for the period from 9:30 a.m. EDT on March 31, 2015 through 11:59 p.m. EDT on April 14, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–07674 Filed 3–31–15; 4:15 pm]

BILLING CODE CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74601; File No. SR–EDGX–2015–14])

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees for the BATS One Market Data Product

March 27, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the market data section of its fee schedule to: (i) Establish a Digital Media Enterprise Fee for the BATS One Feed; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise fee.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the market data section of its fee schedule to: (i) Establish a Digital Media Enterprise Fee for the BATS One Feed; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise fee.

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed [5] as well as published proposed rule changes to establish related fees.[6] The BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on EDGX and its affiliated exchanges [7] and for which the BATS Exchanges report quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[8] The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). In addition, the BATS One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels (''BATS One Premium Feed'').

BATS One Digital Media Enterprise Fee

The Exchange proposes to amend its fee schedule to establish a Digital Media Enterprise Fee of $15,000 per month for the BATS One Summary Feed and $25,000 per month for the BATS One Premium Feed. As an alternative to User fees,[9] a recipient firm may purchase a monthly Digital Media Enterprise license to receive the BATS One Feed from an External Distributor [10] to distribute to an unlimited number of Professional and Non-Professional Users [11] for viewing via television, Web sites, and mobile devices for informational and non-trading purposes only without having to account for the extent of access to the data or the report the number of Users to the Exchange. The Digital Media Enterprise Fee would be in addition to the Data Consolidation Fee.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (''BATS One Approval Order'').

[6] *See* Securities Exchange Act Release Nos. 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09); *and* 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11) (''BATS One Fee Proposals'').

[7] EDGX's affiliated exchanges are BATS Exchange, Inc. (''BZX''), BATS Y-Exchange, Inc. (''BYX''), and EDGA Exchange, Inc. (''EDGA'', together with EDGX, BZX, and BYX, the ''BATS Exchanges''). On January 31, 2014, Direct Edge Holdings LLC (''DE Holdings''), the former parent company of the Exchange and EDGA, completed its business combination with BATS Global Markets, Inc., the parent company of BZX and BYX. *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43, SR–EDGA–2014–34). Upon completion of the business combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.''

[8] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

[9] The Exchange assesses a monthly fee for Professional Users of $10.00 per User for receipt of the BATS One Summary Feed or $15.00 per User who elects to also receive the BATS One Premium Feed. Non-Professional Users are assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user for the BATS One Premium Feed. External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. *See* BATS One Fee Proposals, *supra* note 6.

[10] As defined in the Exchange's fee schedule, an External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.

[11] As defined in the Exchange's fee schedule, a User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. A Non-Professional User of an Exchange Market Data product is a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

[12] The Data Consolidation Fee is $1,000 per month and is designed to reflect the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. *See* BATS One Fee Proposals, *supra* note 6.

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The Exchange proposes a non-substantive change to the description of the BATS One Enterprise fee. The fee schedule currently states that, ''[a]s an alternative to User fees, a recipient firm may purchase a monthly Enterprise Fee to receive the BATS One Feed from an External Distributor for an unlimited number of Professional and Non-Professional Users.'' The Exchange proposes to amend this sentence in two ways. The first amendment is to state that a recipient firm may purchase a monthly Enterprise license, rather than Enterprise fee, as the term ''license'' is a more accurate description. The second is to specify that the recipient firm purchasing a monthly enterprise license does so to distribute the BATS One Feed to an unlimited number of Professional and Non-Professional Users.

2. Statutory Basis

BATS One Digital Media Enterprise Fee

The Exchange believes that the proposed Digital Media Enterprise Fee for the BATS One Feed is consistent with Section 6(b) of the Act,[13] in general, and Section 6(b)(4) of the Act,[14] in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [15] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[16] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fee is equitable and not unfairly discriminatory because it will apply uniformly to market data vendors, television broadcasters, Web site and mobile service providers. The Exchange believes it is reasonable to establish a lower cost fee structure that is designed to facilitate broader media distribution of the BATS One Data Feed for informational purposes because it will benefit investors generally.

In establishing the Digital Media Enterprise Fee, the Exchange recognizes that there is demand for a more seamless and easier–to-administer data distribution mode that takes into account the expanded variety of media and communication devices that investors utilize today. The Exchange believes the Digital Media Enterprise Fee will be easy to administer because data recipients that purchase it would not be required to differentiate between Professional and Non-Professional Users, account for the extent of access to the data, or report the number of Users. This is a significant reduction on a recipient firm's administrative burdens and is a significant value to investors. For example, a television broadcaster could display the BATS One Feed data during market-related programming and on its Web site or allow viewers to view the data via their mobile devices, creating a more seamless distribution model that will allow investors more choice in how they receive and view market data, all without having to account for and/or measure who accesses the data and how often they do so.

The proposed Digital Media Enterprise Fee is equitable and reasonable because it will also enable recipient firms to more widely distribute data from the BATS One Feed to investors for informational purposes at a lower cost than is available today. For example, a recipient firm may purchase an Enterprise license in the amount of $50,000 per month for the BATS One Summary Feed and $100,000 per month for the BATS One Premium Feed to receive the BATS One Feed from an External Distributor for an unlimited number of Professional and Non-Professional Users, which is greater than the Digital Media Enterprise fee proposed herein. The Exchange also believes the amount of the Digital Enterprise [sic] is reasonable as compared to the existing Enterprise fees discussed above because the distribution of BATS One Feed data is limited to television, Web sites, and mobile devices for informational purposes only, while distribution of the BATS One Feed data pursuant to an Enterprise license contains no such limitation. The Exchange also believes that the proposed Digital Media Enterprise fee is equitable and reasonable because it is less than similar fees charged by other exchanges.[17]

The Exchange has taken into consideration its affiliated relationship with EDGA, BYX, and BZX in proposing the Digital Media Enterprise fee to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. As discussed in in [sic] the BATS One Fee Proposal,[18] any entity may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed, and offer a data feed with the same information included in the BATS One Feed to sell and distribute it to its clients with no greater cost than the Exchange.

To enable such competition, the Exchange is offering the Digital Media Enterprise license for the BATS One Feed on terms that a subscriber of the underlying feeds could offer a competing product if it so chooses. The BATS One Feed is comprised of data included in EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.[19] Currently, an External Distributor could create a competing product to the BATS One Premium Feed [20] by purchasing each of these depth of book products

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78k–1.

[16] *See* 17 CFR 242.603.

[17] The Nasdaq Stock Market offers proprietary data products for distribution over the internet and television under alternative fee schedules that are subject to maximum fee of $50,000 per month. *See* Nasdaq Rule 7039(b). The NYSE charges a Digit Media Enterprise fee of $40,000 per month for the NYSE Trade Digital Media product. *See* Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR–NYSE–2013–23).

[18] *See* BATS One Fee Proposals, *supra* note 6.

[19] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

[20] Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $12,500 per month.[21] An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale,[22] and then perform their own aggregation and consolidation function. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $5,000 per month.[23] The Exchange proposes to charge a Digital Media Enterprise Fee ($15,000 per month for the BATS One Summary Feed and $25,000 per month for the BATS One Premium Feed, plus the $1,000 per month Data Consolidation fee) that exceeds the combined External Distributor fees for each of the individual feeds listed above to ensure that vendors could compete with the Exchange by creating the same product as the BATS One Feed to sell to their clients at no greater cost than the Exchange.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission's reliance upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data.

In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [24]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[25] In addition, the existence of alternatives to the BATS One Feed, including real-time consolidated data, free delayed consolidated data, and proprietary last sale data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and users can elect such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach, and the Exchange incorporates by reference into this proposed rule change its affiliate's analysis of this topic in another rule filing.[26]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The Exchange believes that the proposed change to the BATS One Enterprise Fee is consistent with Section 6(b) of the Act,[27] in general, and Section 6(b)(4) of the Act,[28] in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The proposal to amend the description of the Enterprise fee within the fee schedule is equitable and reasonable because the changes are designed to clarify the fee schedule and avoid potential investor confusion. The proposed changes do not amend the amount or application of the BATS One Enterprise fee. The proposed changes are also non-discriminatory as they would apply to all recipient firms uniformly.

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, as amended.

BATS One Digital Media Enterprise Fee

The BATS One Feed Digital Media Enterprise fee will enhance competition because it provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.[29] The Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.[30] Nasdaq offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view of last sale information similar to the BATS One Feed.[31] The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors in order to establish

[21] The monthly External Distributor fee is $2,500 per month for EDGX Depth, $2,500 per month for EDGA Depth, $2,500 for BYX Depth, and $5,000 for BZX Depth.

[22] *See supra* note 5. *See also* BATS Rule 11.22(d) and (g).

[23] The monthly External Distributor fee is $1,250 per month for EDGX Top and EDGX Last Sale (as proposed herein), free for EDGA Top and EDGA Last Sale, $1,250 for BYX Top and BYX Last Sale, and $2,500 for BZX Top and BZX Last Sale. *See* BATS One Fee Proposals, *supra* note 6.

[24] *NetCoalition,* 615 F.3d at 535.

[25] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[26] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (November 17, 2010) (SR–NYSEArca–2010–97).

[27] 15 U.S.C. 78f.

[28] 15 U.S.C. 78f(b)(4).

[29] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF'')); Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades (''BQT'') Data Feed); *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[30] *Id.*

[31] *Id.*

fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Finally, although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the BATS One Feed, the Exchange is not the exclusive distributor of the aggregated and consolidated information that would compose the BATS One Feed. The Exchange has taken into consideration its affiliated relationship with EDGA, BYX, and BZX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. As discussed in in the BATS One Fee Proposal,[32] any entity may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed, and offer a data feed with the same information included in the BATS One Feed to sell and distribute it to its clients with no greater cost than the Exchange.

To enable such competition, the amount of the proposed Digital Media Enterprise license compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The amount of the proposed Digital Media Enterprise license, coupled with the Data Consolidation Fee, is not lower than the cost to a vendor of receiving the underlying data feeds to create a competing product. Therefore, the amount of the proposed Digital Media Enterprise license the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The proposal to amend the description of the Enterprise fee within the fee schedule will not have any impact on completion [sic]. The proposed changes are designed to clarify the fee schedule and avoid potential investor confusion and do not amend the amount or application of the BATS One Enterprise fee.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [33] and paragraph (f) of Rule 19b–4 thereunder.[34] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2015–14 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–EDGX–2015–14. 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 20549–1090, 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–EDGX–2015–14, and should be submitted on or before April 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07522 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 8011–01–P

[32] *See* BATS One Fee Proposals, *supra* note 6.

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Urban AG Corp.; Order of Suspension of Trading

March 31, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Urban AG Corporation (''Urban AG'') because it has not filed a periodic report since it filed its Form 10–Q for the period ending September 30, 2013, filed on

November 19, 2013. Urban AG's common stock (ticker ''AQUM'') is quoted on OTC Link (previously ''Pink Sheets'') operated by OTC Markets Group, Inc.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Urban AG.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Urban AG is suspended for the period from 9:30 a.m. EDT on March 31, 2015, through 11:59 p.m. EDT on April 14, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–07672 Filed 3–31–15; 4:15 pm]

BILLING CODE CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74603; File No. SR–OCC–2015–009]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change To Establish Procedures Regarding the Monthly Resizing of its Clearing Fund and the Addition of Financial Resources

March 27, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2015, The Options Clearing Corporation (''OCC'') 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 OCC.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to establish procedures regarding the monthly resizing of its Clearing Fund and the addition of financial resources through intra-day margin calls and/or an intra-month increase of the Clearing Fund to ensure that it maintains adequate financial resources in the event of a default of a Clearing Member or group of affiliated Clearing Members presenting the largest exposure to OCC.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is intended to describe the situations in which OCC would exercise authority under its Rules to ensure that it maintains adequate Financial Resources[4] in the event that stress tests reveal a default of the Clearing Member or Clearing Member Group[5] presenting the largest exposure would threaten the then-current Financial Resources. This proposed rule change would establish procedures governing: (i) OCC's resizing of the Clearing Fund on a monthly basis pursuant to Rule 1001(a) (the ''Monthly Clearing Fund Sizing Procedure''); and (ii) the addition of Financial Resources through an intra-day margin call on one or more Clearing Members under Rule 609 and, if necessary, an intra-month increase of the Clearing Fund pursuant to Rule 1001(a) (the ''Financial Resource Monitoring and Call Procedure'').[6] The Monthly Clearing Fund Sizing Procedure would permit OCC to determine the size of the Clearing Fund by relying on a broader range of sound risk management practices than those historically used under Rule 1001(a).[7] The Financial Resource Monitoring and Call Procedure would require OCC to collect additional Financial Resources in certain circumstances, establish how OCC calculates and collects such resources and provide the timing by which such resources would be required to be deposited by Clearing Members.

Background

OCC monitors the sufficiency of the Clearing Fund on a daily basis but, prior to emergency action taken on October 16, 2014,[8] OCC had no express authority to increase the size of the Clearing Fund on an intra-month basis.[9] During ordinary course daily monitoring on October 15, 2014, and as a result of increased volatility in the financial markets in October 2014, OCC determined that the Financial Resources needed to cover the potential loss associated with a default of the Clearing Member or Clearing Member Group presenting the largest exposure could have exceeded the Financial Resources then available to apply to such a default.

To permit OCC to increase the size of its Clearing Fund prior to the next monthly resizing that was scheduled to take place on the first business day of November 2014, OCC's Executive Chairman, on October 16, 2014, exercised certain emergency powers as set forth in Article IX, Section 14 of OCC's By-Laws[10] to waive the effectiveness of the second sentence of Rule 1001(a), which states that OCC will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 13, 2015, OCC formally withdrew the proposed rule change filed as SR–OCC–2014–22, as modified by Amendment No. 1 and Amendment No. 2 thereto, the substance of which OCC has refiled as SR–OCC–2015–009.

[4] ''Financial Resources'' means, with respect to a projected loss attributable to a particular Clearing Member or Clearing Member Group, as defined below, the sum of the margin deposits (less any excess margin a Clearing Member or Clearing Member Group may have on deposit at OCC) and deposits in lieu of margin in respect of such Clearing Members' or Clearing Member Groups' accounts, and the value of OCC's Clearing Fund, including both the Base Amount, as defined below, and the prudential margin of safety, as discussed below.

[5] ''Clearing Member Group'' means a Clearing Member and any affiliated entities that control, are controlled by or are under common control with such Clearing Member. *See* OCC By-Laws, Article I, Sections 1.C.(15) and 1.M(11).

[6] This proposed rule filing has also been filed as an advance notice filing (SR–OCC–2014–811).

[7] The procedures described herein would be in effect until the development of a new standard Clearing Fund sizing methodology. Following such development, which will include a quantitative approach to calculating the ''prudential margin of safety,'' as discussed below, OCC will file a separate rule change and advance notice with the Commission that will include a description of the new methodology as well as a revised Monthly Clearing Fund Sizing Procedure.

[8] On October 16, 2014, OCC filed an emergency notice with the Commission to suspend the effectiveness of the second sentence of Rule 1001(a). *See* Securities Exchange Act Release No. 73579 (November 12, 2014), 79 FR 68747 (November 18, 2014) (SR–OCC–2014–807). On November 13, 2014, OCC filed SR–OCC–2014–21 with the Commission to delete the second sentence of Rule 1001(a), preserving the suspended effectiveness of that sentence until such time as the Commission approves or disapproves SR–OCC–2014–21. *See* Securities Exchange Act Release No. 73685 (November 25, 2014) 79 FR 71479 (December 2, 2014) (SR–OCC–2014–21).

[9] *See* Rule 1001(a).

[10] OCC also has submitted an advance notice that would provide greater detail concerning conditions under which OCC would increase the size of the Clearing Fund intra-month. The change would permit an intra-month increase in the event that the five-day rolling average of projected draws are 150% or more of the Clearing Fund's then current size. *See* Securities Exchange Act Release No. 72804 (August 11, 2014), 79 FR 48276 (August 15, 2014) (SR–OCC–2014–804).

adjust the size of the Clearing Fund monthly and that any resizing will be based on data from the preceding month. OCC then filed an emergency notice with the Commission pursuant to Section 806(e)(2) of the Payment, Clearing and Settlement Supervision Act of 2010 [11] and increased the Clearing Fund size for the remainder of October 2014 as otherwise provided for in the first sentence of Rule 1001(a).[12]

Clearing Members were informed of the action taken by the Executive Chairman [13] and the amount of their additional Clearing Fund requirements, which were met without incident. As a result of these actions, OCC's Clearing Fund for October 2014 was increased by $1.8 billion. In continued reliance on the emergency rule waiver and in accordance with the first sentence of Rule 1001(a), OCC set the November 2014 Clearing Fund size at $7.8 billion, which included an amount determined by OCC to be sufficient to protect OCC against loss under simulated default scenarios (*i.e.,* $6 billion), plus a prudential margin of safety (the additional $1.8 billion collected in October).[14] All required contributions to the November 2014 Clearing Fund were met by affected Clearing Members.

Under Article IX, Section 14(c), absent the submission of a proposed rule change to the Commission seeking approval of OCC's waiver of the provisions of the second sentence of Rule 1001(a), such waiver would not be permitted to continue for more than thirty calendar days from the date thereof.[15] Accordingly, on November 13, 2014, OCC submitted SR–OCC–2014–21 to delete the second sentence of Rule 1001(a) and, by the terms of Article IX, Section 14(c), preserve the suspended effectiveness of the second sentence of Rule 1001(a) beyond thirty calendar days.[16]

SR–OCC–2014–21 was submitted in part to permit OCC to determine the size of its Clearing Fund by relying on a broader range of sound risk management practices than considered in basing such size on the average daily calculations under Rule 1001(a) that are performed during the preceding calendar month. The Monthly Clearing Fund Sizing Procedure, as described below, is based on such broader risk management practices and establishes the procedures OCC would use to determine the size of the Clearing Fund on a monthly basis. Similarly, SR–OCC–2014–21 was submitted in part to permit OCC to resize the Clearing Fund more frequently than monthly when the circumstances warrant an increase of the Clearing Fund. The Financial Resource Monitoring and Call Procedure, as described below, establishes the procedures that OCC would use to add Financial Resources through an intra-day margin call on one or more Clearing Members under Rule 609 and, if necessary, an intra-month increase of the Clearing Fund pursuant to Rule 1001(a).[17]

Monthly Clearing Fund Sizing Procedure

Under the Monthly Clearing Fund Sizing Procedure, OCC would continue to calculate the size of the Clearing Fund based on its daily stress test exposures under simulated default scenarios as described in the first sentence of Rule 1001(a) and resize the Clearing Fund on the first business day of each month. However, instead of resizing the Clearing Fund based on the average of the daily calculations during the preceding calendar month, as stated in the suspended second sentence of Rule 1001, OCC would resize the Clearing Fund so that it is the sum of: (i) An amount equal to the peak five-day rolling average of Clearing Fund draws observed over the preceding three calendar months of daily idiosyncratic default and minor systemic default scenario calculations based on OCC's daily Monte Carlo simulations (''Base Amount'') and (ii) a prudential margin of safety determined by OCC and currently set at $1.8 billion.[18]

OCC believes that the proposed Monthly Clearing Fund Sizing Procedure provides a sound and prudent approach to ensure that the Financial Resources are adequate to protect against the largest risk of loss presented by the default of a Clearing Member or Clearing Member Group. By virtue of using only the peak five-day rolling average and by extending the look-back period, the proposed Monthly Clearing Fund Sizing Procedure is both more responsive to sudden increases in exposure and less susceptible to recently observed decreases in exposure that would reduce the overall sizing of the Clearing Fund, thus mitigating procyclicality.[19] Furthermore, the prudential margin of safety provides an additional buffer to absorb potential future exposures not previously observed during the look-back period. The proposed Monthly Clearing Fund Sizing Procedure would be supplemented by the Financial Resource Monitoring and Call Procedure, described below, to provide further assurance that the Financial Resources are adequate to protect against such risk of loss.

Financial Resource Monitoring and Call Procedure

Under the Financial Resource Monitoring and Call Procedure, OCC would use the same daily idiosyncratic default calculation as under the Monthly Clearing Fund Sizing Procedure to monitor daily the adequacy of the Financial Resources to withstand a default by the Clearing Member or Clearing Member Group presenting the largest exposure under extreme but plausible market conditions.[20] If such a daily idiosyncratic default calculation projected a draw on the Clearing Fund (a ''Projected Draw'') that is at least 75% of the Clearing Fund maintained by OCC, OCC would be required to issue an intra-day margin call pursuant to Rule 609 against the Clearing Member or Clearing Member Group that caused such a draw (''Margin Call Event'').[21]

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[11] 12 U.S.C. 5465(e)(2).

[12] *See supra,* note 8.

[13] *See* Information Memorandum #35397, dated October 16, 2014, available on OCC's Web site, *http://www.theocc.com/clearing/clearing-infomemos/infomemos1.jsp.* Clearing members also were informed that a prudential margin of safety of $1.8 billion would be retained until a new Clearing Fund sizing formula has been approved and implemented.

[14] *See* Information Memorandum # 35507, dated October 31, 2014, available on OCC's Web site, *http://www.theocc.com/clearing/clearing-infomemos/infomemos1.jsp.*

[15] *See* OCC By-Laws, Article IX, Section 14(c).

[16] *See supra,* note 8. OCC also submitted this proposed rule change to the Commodity Futures Trading Commission.

[17] As noted in SR–OCC–2014–21, OCC would use its intra-month resizing authority only to increase the size of the Clearing Fund where appropriate, not to decrease the size of the Clearing Fund.

[18] On a daily basis, OCC computes its exposure under the idiosyncratic and minor systemic events. The greater of these two exposures is that day's ''peak exposure.'' To calculate the ''rolling five day average'' OCC computes the average of the peak exposure for each consecutive five-day period observed over the prior three-month period. To determine the Base Amount, OCC would use the largest five-day rolling average observed over the past three-months. This methodology was used to determine the Base Amount of the Clearing Fund for November 2014 and December 2014.

[19] Considering only the peak exposures is a more conservative methodology that gives greater weighting to sudden increases in exposure experienced by Clearing Members, thus enhancing the responsiveness of the procedure to such sudden increases. By using a longer look-back period, the methodology would respond more slowly to recently observed decreases in peak exposures.

[20] Since the minor systemic default scenario contemplates two Clearing Members' simultaneously defaulting and OCC maintains Financial Resources sufficient to cover a default by a Clearing Member or Clearing Member Group representing the greatest exposure to OCC, OCC does not use the minor systemic default scenario to determine the adequacy of the Financial Resources under the Financial Resource Monitoring and Call Procedure.

[21] Rule 609 authorizes OCC to require the deposit of additional margin in any account at any time

Continued

Subject to a limitation described below, the amount of the margin call would be the difference between the Projected Draw and the Base Clearing Fund (''Exceedance Above Base Amount''). In the case of a Clearing Member Group that causes the Exceedance Above Base Amount, the Exceedance Above Base Amount would be pro-rated among the individual Clearing Members that compose the Clearing Member Group based on each individual Clearing Member's proportionate share of the ''total risk'' for such Clearing Member Group as defined in Rule 1001(b), *i.e.,* the margin requirement with respect to all accounts of the Clearing Member Group exclusive of the net asset value of the positions in such accounts aggregated across all such accounts. However, in the case of an individual Clearing Member or a Clearing Member Group, the margin call would be subject to a limitation under which it could not exceed the lower [22] of: (a) $500 million, or (b) 100% of a Clearing Member's net capital. Such limitation would be measured in aggregate with any funds remaining on deposit with OCC deposited by the same Clearing Member pursuant to a Margin Call Event within the same monthly period, as applicable until collection of all funds to satisfy the next regular monthly Clearing Fund resizing (the ''500/100 Limitation'').[23]

Upon satisfaction of the margin call, OCC would use its authority under Rule 608 to preclude the withdrawal of such additional margin amount until it collects all of the funds determined by the next Monthly Clearing Fund Sizing Procedure. Based on three years of back testing data, OCC determined that it would have had Margin Call Events in 10 of the months during this time period. For each of these months, the maximum call amount would have been equal to $500 million, with one exception in which the maximum call amount for the month was $7.7 million.[24] After giving effect to the intra-day margin calls, *i.e.,* by increasing the Financial Resources by $500 million, there was only one Margin Call Event where there was an observed stress test exceedance of the Financial Resources.

To address this one observed instance, the Financial Resource Monitoring and Call Procedure also would require OCC to increase the size of the Clearing Fund (''Clearing Fund Intra-month Increase Event'') if a Projected Draw exceeds 90% of the Clearing Fund, after applying any funds then on deposit with OCC from the applicable Clearing Member or Clearing Member Group pursuant to a Margin Call Event. The amount of such increase (''Clearing Fund Increase'') would be the greater of: (a) $1 billion; or (b) 125% of the difference between (i) the Projected Draw, as reduced by the deposits resulting from the Margin Call Event and (ii) the Clearing Fund. Each Clearing Member's proportionate share of the Clearing Fund Increase would equal its proportionate share of the variable portion of the Clearing Fund for the month in question as calculated pursuant to Rule 1001(b).

OCC would notify the Risk Committee of the Board of Directors (the ''Risk Committee''), Clearing Members and appropriate regulatory authorities of the Clearing Fund Increase on the business day on which the Clearing Fund Intra-month Increase Event occurred. This ensures that OCC management maintains authority to address any potential Financial Resource deficiencies when compared to its Projected Draw estimates. The Risk Committee would then determine whether the Clearing Fund Increase was sufficient, and would retain authority to increase the Clearing Fund Increase or the margin call made pursuant to a Margin Call Event in its discretion. Clearing Members would be required to meet the call for additional Clearing Fund assets by 9:00 a.m. CT on the second business day following the Clearing Fund Intra-Month Increase Event. OCC believes that this collection process ensures additional Clearing Fund assets are promptly deposited by Clearing Members following notice of a Clearing Fund Increase, while also providing Clearing Members with a reasonable period of time to source such assets. Based on OCC's back testing results, after giving effect to the intra-day margin call in response to a Margin Call Event plus the prudential margin of safety, the Financial Resources would have been sufficient upon implementing the one instance of a Clearing Fund Intra-month Increase Event.

OCC believes the Financial Resource Monitoring and Call Procedure strikes a prudent balance between mutualizing the burden of requiring additional Financial Resources and requiring the Clearing Member or Clearing Member Group causing the increased exposure to bear such burden. As noted above, in the event of a Margin Call Event, OCC limits the margin call until collection of all funds to satisfy the next regular monthly resizing to an aggregate of $500 million, or 100% of a Clearing Member's net capital in order to avoid putting an undue liquidity strain on any one Clearing Member. However, where a Projected Draw exceeds 90% of OCC's Clearing Fund, OCC must act to ensure that it has sufficient Financial Resources, and determined that it should mutualize the burden of the additional Financial Resources at this threshold through a Clearing Fund Increase. OCC believes that this balance would provide OCC with sufficient Financial Resources without increasing the likelihood that its procedures would, based solely on stress testing results, cause a liquidity strain on any on Clearing Member that could result in such member's default.

The following examples illustrate the manner in which the Financial Resource Monitoring and Call Procedure would be applied. All assume that the Clearing Fund size is $7.8 billion, $6 billion of which is the Base Amount and $1.8 billion of which is the prudential margin of safety. The 75% threshold in these examples is $5.85 billion.

Example 1: Single CM

Under OCC's stress testing the Projected Draw attributable to Clearing Member ABC, a Clearing Member with no affiliated Clearing Members and net capital of $500 million, is $6.4 billion, or 82% of the Clearing Fund. OCC would make a margin call for $400 million, which represents the Exceedance Above Base Amount. In this case the 500/100 Limitation would not be applicable because the Exceedance Above Base Amount is less than $500 million and 100% of the Clearing Member's net capital. The Clearing Member would be required to meet the $400 million call within one hour unless OCC prescribed a different time, and OCC would retain the $400 million until collection of all the funds to satisfy

during any business day by any Clearing Member for, *inter alia,* the protection of OCC, other Clearing Members or the general public. Clearing Members must meet a required deposit of intra-day margin in immediately available funds at a time prescribed by OCC or within one hour of OCC's issuance of debit settlement instructions against the bank account(s) of the applicable Clearing Member(s), thereby ensuring the prompt deposit of additional Financial Resources.

[22] ''Capping'' the intra-day margin call avoids placing a ''liquidity squeeze'' on the subject Clearing Member(s) based on exposures presented by a hypothetical stress test, which would have the potential for causing a default on the intra-day margin call. Back testing results determined that such calls would have been made against Clearing Members that are large, well-capitalized firms, with more than sufficient resources to satisfy the call for additional margin with the proposed limitations.

[23] The Risk Committee would be notified, and could take action to address potential Financial Resource deficiencies, in the event that a Projected Draw resulted in a Margin Call Event and as a result of the 500/100 Limitation the margin call was less than the Exceedance Above Base Amount, but the Projected Draw was not so large as to result in an increase in the Clearing Fund as discussed below.

[24] The back testing analysis performed assumed a single Clearing Member caused the exceedance.

the next monthly Clearing Fund sizing calculation.

If, on a different day within the same month, CM ABC's Projected Draw minus the $400 million already deposited with OCC results in an Exceedance above Base Amount, another Margin Call Event would be triggered, with the amount currently deposited with OCC applying toward the 500/100 Limitation.

Example 2: Clearing Member Group

Under OCC's stress testing the Projected Draw attributable to Clearing Member Group DEF, comprised of two Clearing Members each with net capital of $800 million, is $6.2 billion, or 79% of OCC's Clearing Fund. OCC would initiate a margin call on Clearing Member Group DEF for $200 million. The call would be allocated to the two Clearing Members that compose the Clearing Member Group based on each Clearing Member's risk margin allocation. In this case the 500/100 Limitation would not be applicable because the Exceedance Above Base Amount is less than $500 million and 100% of net capital. The margin call would be required to be met within one hour of the call unless OCC prescribed a different time. For example, in the case where one Clearing Member accounts for 75% of the risk margin for the Clearing Member Group, that Clearing Member would be allocated $150 million of the call and the other Clearing Member, accounting for 25% of the risk margin for the Clearing Member Group, would be allocated $50 million of the call. The funds would remain deposited with OCC until collection of all the funds to satisfy the next monthly Clearing Fund sizing calculation.

Example 3: Clearing Member Group With $500 Million Cap

Under OCC's stress testing the Projected Draw attributable to Clearing Member Group GHI, comprised of two Clearing Members each with net capital of $800 million, is $6.8 billion, or 87% of the Clearing Fund. The Exceedance Above Base Amount would be $800 million, allocated to the two Clearing Members that compose the Clearing Member Group based on each Clearing Member's risk margin allocation. Using the 75/25 risk margin allocation from Example 2, one Clearing Member would be allocated $600 million and the other Clearing Member would be allocated $200 million. The first Clearing Member would be required to deposit $500 million with OCC, which is the lowest of $500 million, that member's net capital, or that member's share of the Exceedance Above Base Amount, and the other Clearing Member would be required to deposit $200 million with OCC. After collecting the additional margin, OCC would determine whether the Projected Draw would exceed 90% of the Clearing Fund after reducing the Projected Draw by the additional margin. This calculation would divide a Projected Draw of $6.1 billion, which is the original Projected Draw of $6.8 billion reduced by the additional margin, by the Clearing Fund of $7.8 billion. The resulting percentage of 78% would be below the 90% threshold, and accordingly there would not be a Clearing Fund Intra-month Increase Event.

Example 4: Margin Call and Increase in Size of Clearing Fund

Under OCC's stress testing the Projected Draw attributable to Clearing Member JKL, a Clearing Member with no affiliated Clearing Members and net capital of $600 million, is $10.0 billion, or 128% of the Clearing Fund. OCC would make a margin call for $500 million, which represents the lowest of the Exceedance Above Base Amount, $500 million and 100% of net capital. The Clearing Member would be required to meet the $500 million call within one hour unless OCC prescribed a different time, and OCC would retain the $500 million until collection of all the funds to satisfy the next monthly Clearing Fund sizing calculation.

After collecting the additional margin, OCC would determine whether the Projected Draw would exceed 90% of the Clearing Fund after reducing the Projected Draw by the additional margin. This calculation would divide a Projected Draw of $9.5 billion, which is the original Projected Draw of $10 billion reduced by the additional margin, by the Clearing Fund of $7.8 billion. The resulting percentage of 122%, while lower, would still exceed the 90% threshold, and accordingly OCC would declare a Clearing Fund Intra-month Increase Event. To calculate the Clearing Fund Increase, OCC would first determine the difference between the modified Projected Draw ($9.5 billion) and the Clearing Fund ($7.8 billion), which in this case would be $1.7 billion, OCC would then multiply this by 1.25, resulting in $2.125 billion. Because this amount is greater than $1 billion, the Clearing Fund Increase would be $2.125 billion and a modified Clearing Fund of OCC totaling $9.925 billion ($425 million in excess of the modified Projected Draw of $9.5 billion).

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[25] and the rules and regulations thereunder. By establishing sound procedures governing the monthly resizing of the Clearing Fund and how OCC would add Financial Resources in response to a Margin Call Event and a Clearing Fund Intra-month Increase Event, the proposed modifications would further ensure that OCC is capable of safeguarding securities and funds which are in the custody or control of OCC or for which it is responsible and protecting investors and the public interest. The development of the Monthly Clearing Fund Sizing Procedure and the Financial Resource Monitoring and Call Procedure also ensures that OCC has procedures designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions, in compliance with Rule 17Ad-22(b)(3).[26]

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.[27] OCC believes the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because OCC would establish the size of the Clearing Fund in accordance with the Monthly Clearing Fund Sizing Procedure and without regard to any particular user or Clearing Member that makes Clearing Fund contributions. Furthermore, OCC would respond to a Margin Call Event and Clearing Fund Intra-month Increase Event in accordance with the Financial Resource Monitoring and Call Procedure without regard to any particular user or Clearing Member.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition.

[25] 15 U.S.C. 78q-1(b)(3)(F).

[26] 17 CFR 240.17Ad-22(b)(3).

[27] 15 U.S.C. 78-q1(b)(3)(I).

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2015–009 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–OCC–2015–009. 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_15_009.pdf*. 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–OCC–2015–009 and should be submitted on or before April 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07523 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74599; File No. SR–BYX–2015–19]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees for the BATS One Market Data Product

March 27, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 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 the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the market data section of its fee schedule to: (i) Establish a Digital Media Enterprise Fee for the BATS One Feed; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise fee.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the market data section of its fee schedule to: (i) Establish a Digital Media Enterprise Fee for the BATS One Feed; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise fee.[5]

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed[6] as well as published proposed rule changes to

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange notes that the date of the fee schedule was amended to March 17, 2015 in a previously filed proposed rule change. *See* SR–BYX–2015–18 (filed March 17, 2015).

[6] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (''BATS One Approval Order'').

establish related fees.[7] The BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on BYX and its affiliated exchanges [8] and for which the BATS Exchanges report quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[9] The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). In addition, the BATS One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels (''BATS One Premium Feed'').

BATS One Digital Media Enterprise Fee

The Exchange proposes to amend its fee schedule to establish a Digital Media Enterprise Fee of $15,000 per month for the BATS One Summary Feed and $25,000 per month for the BATS One Premium Feed. As an alternative to User fees,[10] a recipient firm may purchase a monthly Digital Media Enterprise license to receive the BATS One Feed from an External Distributor [11] to distribute to an unlimited number of Professional and Non-Professional Users [12] for viewing via television, Web sites, and mobile devices for informational and non-trading purposes only without having to account for the extent of access to the data or the report the number of Users to the Exchange. The Digital Media Enterprise Fee would be in addition to the Data Consolidation Fee.[13]

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The Exchange proposes a non-substantive change to the description of the BATS One Enterprise fee. The fee schedule currently states that, ''[a]s an alternative to User fees, a recipient firm may purchase a monthly Enterprise Fee to receive the BATS One Feed from an External Distributor for an unlimited number of Professional and Non-Professional Users.'' The Exchange proposes to amend this sentence in two ways. The first amendment is to state that a recipient firm may purchase a monthly Enterprise license, rather than Enterprise fee, as the term ''license'' is a more accurate description. The second is to specify that the recipient firm purchasing a monthly enterprise license does so to distribute the BATS One Feed to an unlimited number of Professional and Non-Professional Users.

2. Statutory Basis

BATS One Digital Media Enterprise Fee

The Exchange believes that the proposed Digital Media Enterprise Fee for the BATS One Feed is consistent with Section 6(b) of the Act,[14] in general, and Section 6(b)(4) of the Act,[15] in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [16] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[17] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fee is equitable and not unfairly discriminatory because it will apply uniformly to market data vendors, television broadcasters, Web site and mobile service providers. The Exchange believes it is reasonable to establish a lower cost fee structure that is designed to facilitate broader media distribution of the BATS One Data Feed for informational purposes because it will benefit investors generally.

In establishing the Digital Media Enterprise Fee, the Exchange recognizes that there is demand for a more seamless and easier–to-administer data distribution mode that takes into account the expanded variety of media and communication devices that investors utilize today. The Exchange believes the Digital Media Enterprise Fee will be easy to administer because data recipients that purchase it would not be required to differentiate between Professional and Non-Professional Users, account for the extent of access

[7] *See* Securities Exchange Act Release Nos. 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09); *and* 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11) (''BATS One Fee Proposals'').

[8] BYX's affiliated exchanges are EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), and BATS Exchange, Inc. (''BZX'', together with EDGX, EDGA, and BYX, the ''BATS Exchanges''). On January 23, 2014, BATS Global Markets, Inc. (''BGMI''), the former parent company of the Exchange and BZX, completed its business combination with Direct Edge Holdings LLC, the parent company of EDGA and EDGX. *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039). Upon completion of the business combination, DE Holdings and BGMI each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.'' and BGMI changed its name to ''BATS Global Markets Holdings, Inc.''

[9] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

[10] The Exchange assesses a monthly fee for Professional Users of $10.00 per User for receipt of the BATS One Summary Feed or $15.00 per User who elects to also receive the BATS One Premium Feed. Non-Professional Users are assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user for the BATS One Premium Feed. External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. *See* BATS One Fee Proposals, *supra* note 7.

[11] As defined in the Exchange's fee schedule, an External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.

[12] As defined in the Exchange's fee schedule, a User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. A Non-Professional User of an Exchange Market Data product is a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

[13] The Data Consolidation Fee is $1,000 per month and is designed to reflect the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. *See* BATS One Fee Proposals, *supra* note 7.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78k–1.

[17] *See* 17 CFR 242.603.

to the data, or report the number of Users. This is a significant reduction on a recipient firm's administrative burdens and is a significant value to investors. For example, a television broadcaster could display the BATS One Feed data during market-related programming and on its Web site or allow viewers to view the data via their mobile devices, creating a more seamless distribution model that will allow investors more choice in how they receive and view market data, all without having to account for and/or measure who accesses the data and how often they do so.

The proposed Digital Media Enterprise Fee is equitable and reasonable because it will also enable recipient firms to more widely distribute data from the BATS One Feed to investors for informational purposes at a lower cost than is available today. For example, a recipient firm may purchase an Enterprise license in the amount of $50,000 per month for the BATS One Summary Feed and $100,000 per month for the BATS One Premium Feed to receive the BATS One Feed from an External Distributor for an unlimited number of Professional and Non-Professional Users, which is greater than the Digital Media Enterprise fee proposed herein. The Exchange also believes the amount of the Digital Enterprise [sic] is reasonable as compared to the existing Enterprise fees discussed above because the distribution of BATS One Feed data is limited to television, Web sites, and mobile devices for informational purposes only, while distribution of the BATS One Feed data pursuant to an Enterprise license contains no such limitation. The Exchange also believes that the proposed Digital Media Enterprise fee is equitable and reasonable because it is less than similar fees charged by other exchanges.[18]

The Exchange has taken into consideration its affiliated relationship with BZX, EDGA, and EDGX in proposing the Digital Media Enterprise fee to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. As discussed in in [sic] the BATS One Fee Proposal,[19] any entity may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed, and offer a data feed with the same information included in the BATS One Feed to sell and distribute it to its clients with no greater cost than the Exchange.

To enable such competition, the Exchange is offering the Digital Media Enterprise license for the BATS One Feed on terms that a subscriber of the underlying feeds could offer a competing product if it so chooses. The BATS One Feed is comprised of data included in EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.[20] Currently, an External Distributor could create a competing product to the BATS One Premium Feed [21] by purchasing each of these depth of book products from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $12,500 per month.[22] An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale,[23] and then perform their own aggregation and consolidation function. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is $5,000 per month.[24] The Exchange proposes to charge a Digital Media Enterprise Fee ($15,000 per month for the BATS One Summary Feed and $25,000 per month for the BATS One Premium Feed, plus the $1,000 per month Data Consolidation fee) that exceeds the combined External Distributor fees for each of the individual feeds listed above to ensure that vendors could compete with the Exchange by creating the same product as the BATS One Feed to sell to their clients at no greater cost than the Exchange.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission's reliance upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data.

In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [25]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[26] In addition, the existence of alternatives to the BATS One Feed, including real-time consolidated data, free delayed consolidated data, and proprietary last sale data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably

[18] The Nasdaq Stock Market offers proprietary data products for distribution over the internet and television under alternative fee schedules that are subject to maximum fee of $50,000 per month. *See* Nasdaq Rule 7039(b). The NYSE charges a Digit Media Enterprise fee of $40,000 per month for the NYSE Trade Digital Media product. *See* Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR–NYSE–2013–23).

[19] *See* BATS One Fee Proposals, *supra* note 7.

[20] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

[21] Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

[22] The monthly External Distributor fee is $2,500 per month for EDGX Depth, $2,500 per month for EDGA Depth, $2,500 for BYX Depth, and $5,000 for BZX Depth.

[23] *See supra* note 6. *See also* BATS Rule 11.22(d) and (g).

[24] The monthly External Distributor fee is $1,250 per month for EDGX Top and EDGX Last Sale (as proposed herein), free for EDGA Top and EDGA Last Sale, $1,250 for BYX Top and BYX Last Sale, and $2,500 for BZX Top and BZX Last Sale. *See* BATS One Fee Proposals, *supra* note 7.

[25] *NetCoalition,* 615 F.3d at 535.

[26] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

discriminatory, when vendors and users can elect such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach, and the Exchange incorporates by reference into this proposed rule change its affiliate's [sic] analysis of this topic in another rule filing.[27]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The Exchange believes that the proposed change to the BATS One Enterprise Fee is consistent with Section 6(b) of the Act,[28] in general, and Section 6(b)(4) of the Act,[29] in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The proposal to amend the description of the Enterprise fee within the fee schedule is equitable and reasonable because the changes are designed to clarify the fee schedule and avoid potential investor confusion. The proposed changes do not amend the amount or application of the BATS One Enterprise fee. The proposed changes are also non-discriminatory as they would apply to all recipient firms uniformly.

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, as amended.

BATS One Digital Media Enterprise Fee

The BATS One Feed Digital Media Enterprise fee will enhance competition because it provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.[30] The Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.[31] Nasdaq offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view of last sale information similar to the BATS One Feed.[32] The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Finally, although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the BATS One Feed, the Exchange is not the exclusive distributor of the aggregated and consolidated information that would compose the BATS One Feed. The Exchange has taken into consideration its affiliated relationship with BZX, EDGA, and EDGX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. As discussed in in the BATS One Fee Proposal,[33] any entity may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed, and offer a data feed with the same information included in the BATS One Feed to sell and distribute it to its clients with no greater cost than the Exchange.

To enable such competition, the amount of the proposed Digital Media Enterprise license compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The amount of the proposed Digital Media Enterprise license, coupled with the Data Consolidation Fee, is not lower than the cost to a vendor of receiving the underlying data feeds to create a competing product. Therefore, the amount of the proposed Digital Media Enterprise license the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

Non-Substantive Change to the Description of the BATS One Enterprise Fee

The proposal to amend the description of the Enterprise fee within the fee schedule will not have any impact on completion [sic]. The proposed changes are designed to clarify the fee schedule and avoid potential investor confusion and do not amend the amount or application of the BATS One Enterprise fee.

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[27] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (November 17, 2010) (SR–NYSEArca–2010–97).

[28] 15 U.S.C. 78f.

[29] 15 U.S.C. 78f(b)(4).

[30] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF'')); Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades (''BQT'') Data Feed); *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[31] *Id.*

[32] *Id.*

[33] *See* BATS One Fee Proposals, *supra* note 7.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [34] and paragraph (f) of Rule 19b–4 thereunder.[35] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BYX–2015–19 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–2015–19. 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 20549–1090, 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–2015–19, and should be submitted on or before April 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07520 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f).

[36] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

GMB Mezzanine Capital II, L.P. License No. 05/05–0299; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that GMB Mezzanine Capital II, L.P., 50 South Sixth Street, Suite 1460, Minneapolis, MN 55402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). GMB Mezzanine Capital II, L.P. proposes to provide subordinated debt financing to H & R Accounts, Inc. d.b.a. Avadyne Health, Inc., 7017 John Deere Parkway, Moline, IL 61265.

The financing is brought within the purview of § 107.730(a)(4) of the Regulations because GMB Mezzanine Capital, L.P., a current investor in H & R Accounts, Inc. and an Associate of GMB Mezzanine Capital II, L.P., will receive repayment of its subordinated debt investment from the proceeds of GMB Mezzanine Capital II, L.P.'s proposed investment. Therefore, this transaction is considered providing financing to a Small Business to discharge an obligation to an Associate, requiring SBA prior written exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: March 17, 2015.

Javier E. Saade,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2015–07582 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14252 and #14253]

New Hampshire Disaster #NH–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of NEW HAMPSHIRE (FEMA–4209–DR), dated 03/25/2015.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 01/26/2015 through 01/28/2015.

Effective Date: 03/25/2015.

Physical Loan Application Deadline Date: 05/26/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 12/28/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/25/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hillsborough; Rockingham; Strafford.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14252B and for economic injury is 14253B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–07583 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2015–0013]

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–2015–0013].

I. The information collections below are pending at SSA. SSA will submit them 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 June 1, 2015. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Application for Special Benefits for World War II Veterans—20 CFR 408, Subparts B, C and D—0960–0615.* Title VIII of the Social Security Act (Act) (Special Benefits for Certain World War II Veterans) allows qualified World War II veterans residing outside the United States to receive monthly payments. These regulations establish the requirements individuals need to qualify for and become entitled to Special Veterans Benefits (SVB). SSA uses Form SSA–2000–F6 to elicit the information we need to determine entitlement to SVB. This information collection request comprises the relevant regulations and Form SSA–2006–F6. The respondents are individuals applying for SVB under Title VIII of the Act.

Type of Request: Revision of an OMB-approved information collection.

Regulations section and modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total estimated annual burden (hours)
SSA–2000–F6	50	1	20	17
§ 408.420 (a), (b)	35	1	15	9
§§ 408.430 & .432	33	1	30	17
§ 408.435 (a), (b), (c)	35	1	15	9
Totals	153	.....	.....	52

2. *Representative Payee Report-Special Veterans Benefits—20 CFR 408.665—0960–0621.* Title VIII of the Act allows for payment of monthly Social Security benefits to qualified World War II veterans residing outside the United States. An SSA-appointed representative payee may receive and manage the monthly payment for the beneficiary's use and benefit. SSA uses the information on Form SSA–2001–F6 to determine whether the representative payee used the certified payments properly, and continues to demonstrate strong concern for the beneficiary's best interests. Representative payees who receive SVB on behalf of beneficiaries residing outside the United States must complete the SSA–2001–F6 annually. We also require these representative payees to complete the form any time we have reason to believe they could be misusing the benefit payments. The respondents are individuals or organizations serving as representative payees who receive SVB on behalf of beneficiaries living outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total estimated annual burden (hours)
SSA–2001–F6	50	1	10	8

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 May 4, 2015. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Waiver of Right to Appear—Disability Hearing—20 CFR 404.913–404.914, 404.916(b)(5), 416.1413–416.1414, 416.1416(b)(5)—0960–0534. Claimants for Social Security disability payments or their representatives can use Form SSA–773–U4 to officially waive their right to appear at a disability hearing. The disability hearing officer uses the signed form as a basis for not holding a hearing, and for preparing a written decision on the claimant's request for disability payments based solely on the evidence of record. The respondents are claimants for disability payments under Title II and Title XVI of the Act, or their representatives, who wish to waive their right to appear at a disability hearing.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total estimated annual burden (hours)
SSA–773–U4	200	1	3	10

Dated: March 27, 2015.

Faye I. Lipsky,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2015–07514 Filed 4–1–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0224]

Parts and Accessories Necessary for Safe Operation; Exemption Renewal for Greyhound Lines, Inc.

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

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA renews Greyhound Lines, Inc.'s (Greyhound) exemption which allows the placement of video event recorders at the top of the windshields on its buses, and within the swept area of the windshield wipers. Greyhound may continue to use the video event recorders to increase safety through identification and remediation of risky driving behaviors such as distracted driving and drowsiness; enhanced monitoring of passenger behavior; and enhanced collision review and analysis. The Agency has concluded that granting this exemption renewal will maintain a level of safety that is equivalent to or greater than the level of safety achieved without the exemption. However, the Agency requests comments and information on the exemption, especially from anyone who believes this standard will not be maintained.

DATES: This decision is effective April 2, 2015. Comments must be received on or before May 4, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) number FMCSA–2008–0224 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. 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'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–4325; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Basis for Renewing Exemption

On March 19, 2008, Greyhound applied for an exemption from 49 CFR 393.60(e)(1) to allow it to install video event recorders on some or all of its bus fleet. On March 19, 2009, FMCSA published a notice of final disposition granting the exemption (74 FR 11807). On March 22, 2011, FMCSA published a notice of final disposition renewing this exemption until March 20, 2013 (76 FR 16034). On March 22, 2013, FMCSA published a notice of final disposition renewing this exemption until March 20, 2015 (78 FR 17749). The renewal outlined in this Notice extends the exemption through March 20, 2017.

FMCSA is not aware of any evidence showing that the installation of video event recorders on Greyhound's buses, in accordance with the conditions of the original and subsequent exemptions, has resulted in any degradation in safety. FMCSA continues to believe that the potential safety gains from the use of video event recorders to improve driver behavior will enhance the overall level of safety to the motoring public.

The exemption is renewed subject to the requirements that video event recorders installed in Greyhound's buses be mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and located outside the driver's sight lines to the road and highway signs and signals. The exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Greyhound fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

The Agency believes that extending the exemption for another two years will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) the video event recorders will not obstruct drivers' views of the roadway, highway signs and surrounding traffic due to the fact that the panoramic windshields installed on Greyhound's buses encompass a large percentage of the front of buses and extend well above the driver's sight lines; (2) larger windshield wipers installed on Greyhound's buses increase the swept area well beyond that which is recommended by SAE International's guidelines for commercial vehicles; and (3) placement of video event recorders just below the larger swept area of the wipers will be well outside of the driver's useable sight lines. In addition, the Agency believes that the use of video event recorders by fleets to deter unsafe driving behavior is likely to improve the overall level of safety to the motoring public.

Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

Request for Comments

FMCSA requests comments from parties with data concerning the safety record of buses operated by Greyhound and equipped with video event recorders by May 4, 2015.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the Greyhound exemption.

Issued on: March 26, 2015.

T. F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–07636 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0317]

Hours of Service of Drivers: National Ready Mixed Concrete Association; Application for Exemption; Final Disposition

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the National Ready Mixed Concrete Association (NRMCA) a limited exemption from the minimum 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. Under the terms and conditions of this exemption, drivers operating ready-mixed concrete trucks may use 30 minutes or more of on-duty ''waiting time'' to satisfy the requirement for the 30 minute rest break, provided they do not perform any other work during the break. The exemption giving these drivers the same regulatory flexibility that 49 CFR 395.1(q) provides for drivers transporting explosives. The FMCSA has determined that granting these drivers an exemption from the 30-minute rest break requirement is likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: The exemption is effective from 12:01 a.m., April 2, 2015 through 11:59 p.m., April 3, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver, and Vehicle Safety Standards; Telephone: 202 366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

The National Ready Mixed Concrete Association (NRMCA) is an industry trade association that represents more than 2,000 member companies and subsidiaries that manufacture and deliver ready-mixed concrete. They estimate that there are roughly 68,000 drivers of ready-mixed concrete mixer trucks. According to NRMCA, approximately 5 percent of ready-mixed concrete deliveries—with around 3,400 drivers—involve interstate commerce.

NRMCA requests an exemption from the hours-of-service (HOS) regulation pertaining to rest breaks [§ 395.3(a)(3)(ii)]. Membership in NRMCA would not be required to be eligible for the exemption, it would apply industry-wide to all motor carriers and drivers operating ready-mixed concrete trucks. NRMCA requests the exemption because it states that most concrete-mixer drivers operate for at least 8 hours per day; however 10 hours or more per day during the busy construction season is common. They indicate that less than 40% of this time is actual driving time. Furthermore, compliance with the 30-minute rest break rule is extremely difficult due to the numerous variables associated with delivery (*e.g.,* weather, customer readiness, traffic) and becomes even more problematic and burdensome while transporting a perishable product during the busy season.

Mixer drivers take numerous rest breaks throughout each work period; however, those breaks are not ''off duty'' under interpretations of the Federal regulations and therefore do not count as the minimum 30-minute breaks. According to NRMCA, a common example of this is a mixer driver merely sitting inside the cab of the truck, at the controls, waiting to move the truck into position and unload. This very common occurrence within the industry is not considered a valid off-duty break under the current regulations and guidance because the mixer driver still has ''responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying'' (§ 395.2 definition of on-duty time.)

Regarding the § 395.1(e)(1) exemption from the 30-minute rest break provision for short-haul carriers, NRMCA added that mixer drivers often work past the 12-hour reporting time limit for the exemption, and therefore are unable to utilize it. According to NRMCA, when a mixer driver is forced to work past the 12-hour reporting time limit, there is currently no method to show that a driver intended to comply with the 100 air-mile logging exemption and therefore did take or log a 30-minute break. This causes a ''compliance conundrum'' for the ready-mixed concrete driver.

Further details regarding the industry's safety controls can be found in the application for exemption, which can be accessed in the docket identified at the beginning of this notice. NRMCA asserted that granting the exemption would achieve the same level of safety provided by the rule because ready-mixed concrete drivers routinely receive numerous 10-, 15-, and 20-minute breaks throughout the work day. NRMCA claimed that extending one of these breaks to 30 minutes and only ''attending'' the vehicle during this period would have no negative safety impact. NRMCA further added that the ready-mixed concrete industry ensures mixer-truck drivers are as safe as possible and continues to use practices that emphasize safety. This attention to safety is achieved through mandating rigorous training for concrete mixer-truck drivers; daily, weekly, monthly, quarterly and annual safety checks; and self-imposed random safety audits. The proposed exemption would be effective for 2 years, the maximum period allowed by § 381.300.

Public Comments

On August 20, 2013, FMCSA published notice of this application, and requested public comment (78 FR 51267). Over 250 comments were submitted, with more than 87% in support of the exemption request. These comments came mainly from various ready-mixed concrete companies. Nine industry trade associations—primarily concrete-related State associations—filed comments in support of the NRMCA exemption. Fifteen other individuals (drivers, etc.) commented: 11 Favored the exemption request; 3 were opposed; and 1 took no position.

The comments stated that requiring ready-mixed concrete truck drivers to comply with the 30-minute rest break provision causes an undue hardship on the drivers, the delivery of their product, service to their customers, and the bottom-line finances of their company. The primary reasons for requesting the exemption were: (1) Concrete mixer drivers deliver a perishable product and spend less than 40% of their on-duty time driving; (2) industry-wide, mixer drivers on average drive 14 miles from the ready-mixed concrete plant to the job, do not have the fatigue-inducing work conditions long-haul truckers experience; and (3) while some concrete mixer drivers will be able to take advantage of the exception from the 30-minute break for certain short-haul drivers, many drivers often work more than 12 hours in a day, and therefore cannot utilize the short-haul exemption.

Some comments opposed to the NRMCA exemption saw no safety benefit in a 30-minute break in the first place, while others believed that this segment of the industry should not be granted relief from the 30-minute break while other industry segments have to comply with the rule.

FMCSA Decision

FMCSA has evaluated NRMCA's application and the public comments and decided to grant the exemption. The Agency believes that the exempted ready-mixed concrete drivers will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. It is important to note that the Agency is not granting a complete exemption from the 30-minute rest break provision required by 49 CFR 395.3(a)(3)(ii). Instead, FMCSA is granting an exemption for ready-mixed concrete trucks and drivers who remain with the CMV (*i.e.,* wait) while not performing any other work-related activities. The only subject of the exemption is the duty status of the driver while ''waiting'' with the vehicle during a required rest break. Like drivers of trucks carrying certain kinds of explosives (§ 395.1(q)) drivers of ready-mixed concrete trucks will be allowed to use 30-minutes on-duty periods in attendance on the vehicles, while performing no other work, to meet the requirement for a rest break. Therefore, the Agency grants the exemption request subject to the terms and conditions in this **Federal Register** notice.

Terms of the Exemption

1. Drivers of ready-mixed concrete trucks subject to the requirement for a 30-minute rest break in § 395.3(a)(3)(ii) may use 30 minutes or more of ''waiting time'' to meet the requirements for a rest break. ''Waiting time'' means time spent while waiting with the CMV at a job site or terminal and performing no other on-duty activities during this time.

2. Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.

3. All motor carriers operating under this exemption must have a ''Satisfactory'' safety rating with FMCSA, or be ''unrated.'' Motor carriers with ''Conditional'' or ''Unsatisfactory''

FMCSA safety ratings are prohibited from using this exemption.

4. All motor carriers operating under this exemption must have Safety Measurement System (SMS) scores below FMCSA's intervention thresholds, as displayed at *http://ai.fmcsa.dot.gov/sms/.*

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from 12:01 a.m., April 2, 2015 through 11:59 p.m., April 3, 2017.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMV drivers operating under the terms of this exemption. The notification must include the following information:

a. Date of the accident,

b. City or town, and State, in which the accident occurred, or closest to the accident scene,

c. Driver's name and license number and State of issuance,

d. Vehicle number and State license plate number,

e. Number of individuals suffering physical injury,

f. Number of fatalities,

g. The police-reported cause of the accident,

h. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

i. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: March 26, 2015.

T. F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–07567 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 43 (Sub-No. 190X)]

Illinois Central Railroad Company—Discontinuance of Service Exemption—in Sangamon and Montgomery Counties, Ill.

On March 13, 2015, Illinois Central Railroad Company (IC) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue rail service over approximately 10.75 miles of rail line between milepost 207.25 at Cimic and milepost 218.0 at Farmersville in Sangamon and Montgomery Counties, Ill.

IC states that the line includes the stations of Farmersville and Cimic, although Cimic will remain open north of milepost 207.25. The line traverses U.S. Postal Service Zip Codes 62530, 62533, and 62690.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad–Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 1, 2015.

Because this is a discontinuance proceeding and not an abandonment proceeding, trail use/rail banking and public use conditions are not appropriate.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than July 11, 2015, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Each offer must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB 43 (Sub-No. 190X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832. Replies to the petition are due on or before April 22, 2015.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR pt. 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.''*

Decided: March 30, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–07558 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets DOT–OST–2014–0097 and DOT–OST–2014–0098]

Applications of Jet Aviation Flight Services, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2015–3–18) Dockets DOT–OST–2014–0097 and DOT–OST–2014–0098

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Jet Aviation Flight Services, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than April 10, 2015.

ADDRESSES: Objections and answers to objections should be filed in Dockets DOT–OST–2014–0097 and DOT–OST–2014–0098 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue SE., West

Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X–56), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

Brandon M. Belford,

Deputy Assistant Secretary, for Aviation and International Affairs.

[FR Doc. 2015–07564 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 741X)]

CSX Transportation, Inc.—Abandonment Exemption—in Raleigh County, W. Va

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon a 15.12-mile line of railroad on its Southern Region, Huntington East Division, Big Marsh Fork Subdivision (former Jarrolds Valley Subdivision) (the Line). The Line extends between mileposts CLP 0.0 and CLP 15.12 near Whitesville, in Raleigh County, W. Va.[1] The Line traverses United States Postal Service Zip Codes 25008, 25044, 25048, 25060, and 25193.[2]

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will become effective on May 2, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 13, 2015. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 22, 2015, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by April 7, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 2, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: March 30, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–07573 Filed 4–1–15; 4:45 am]

BILLING CODE CODE 4915–01–P

[1] Based on prior notices of exemption, CSXT was authorized to discontinue service and abandon the same 15.12-mile line segment. *See CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Raleigh Cnty., W. Va.,* AB 55 (Sub-No. 620X) (STB served July 19, 2002); *CSX Transp., Inc.—Aban. Exemption—in Raleigh Cnty., W. Va.,* AB 55 (Sub-No. 661X) (STB served Sept. 22, 2005). However, CSXT asserts that it never consummated the abandonment authority and that the authority has expired.

[2] Upon receiving abandonment authority, CSXT plans to sell the Line for trail use.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Community Volunteer Income Tax Assistance (VITA) Matching Grant Program—Availability of Application for Federal Financial Assistance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of the application package for the 2016 Community Volunteer Income Tax Assistance (VITA) Matching Grant Program.

DATES: Application instructions are available electronically from the IRS on May 1, 2015 by visiting: IRS.gov (key word search—''VITA Grant''). Application packages are available on May 1, 2015 by visiting Grants.gov and searching with the Catalog of Federal Domestic Assistance (CFDA) number 21.009. The deadline for submitting an application to the IRS through Grants.gov for the Community VITA Matching Grant Program is May 31, 2015. However, because this date falls on a non-workday the deadline is being extended until Monday, June 1, 2015. All applications must be submitted through Grants.gov.

ADDRESSES: Internal Revenue Service, Grant Program Office, 401 West

Peachtree St. NW., Suite 1645, Stop 420–D, Atlanta, GA 30308.

FOR FURTHER INFORMATION CONTACT: Grant Program Office via their email address at *Grant.Program.Office@irs.gov.*

SUPPLEMENTARY INFORMATION: Authority for the Community Volunteer Income Tax Assistance (VITA) Matching Grant Program is contained in the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, signed December 16, 2014.

Dated: March 23, 2015.

Mikki Betker,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2015–07589 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of four individuals and five entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182). In addition, OFAC is updating the identifying information for one individual who was previously identified pursuant to the Kingpin Act.

DATES: The designation by the Director of OFAC of the four individuals and five entities identified and one update in this notice pursuant to section 805(b) of the Kingpin Act is effective on March 24, 2015.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On March 24, 2015, the Director of OFAC designated the following four individuals and five entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. KELMENDI, Besnik (a.k.a. KELJMENDI, Besnik); DOB 30 Oct 1980; POB Pec, Kosovo; Passport 5661746 (Bosnia and Herzegovina) (individual) [SDNTK] (Linked To: N.P.T.T. DONA–SHELL).
2. KELMENDI, Donata, Pec (Peje), Kosovo; DOB 16 Sep 1992 (individual) [SDNTK] (Linked To: HOTEL CASA GRANDE–ULCINJ, MONTENEGRO).
3. KELMENDI, Elvis (a.k.a. KELJMENDI, Elvis), Pec, Kosovo; DOB 03 May 1978; POB Prizren, Kosovo; Personal ID Card 0305978934868 (Montenegro) (individual) [SDNTK].
4. KELMENDI, Liridon (a.k.a. KELJMENDI, Liridon); DOB 01 Jan 1983; POB Pec, Kosovo; Passport 5239319 (Bosnia and Herzegovina); alt. Passport 005452254 (Bosnia and Herzegovina) (individual) [SDNTK].

Entities

1. DONATA COMPANY D.O.O., Totosi B.B., Ulcinj, Montenegro; Company Number 50461890 [SDNTK].
2. HOTEL CASA GRANDE–SARAJEVO, BOSNIA AND HERZEGOVINA, Velika Aleja 2, Sarajevo 71000, Bosnia and Herzegovina [SDNTK].
3. HOTEL CASA GRANDE–ULCINJ, MONTENEGRO, Donji Stoj B.B., Ulcinj 85360, Montenegro; Web site *www.casagrande-mne.com* [SDNTK].
4. N.P.T.T. DONA–SHELL (a.k.a. DONASHELL; a.k.a. DONNA SHELL), Pec, Kosovo; Company Number 80386621 (Kosovo) [SDNTK].
5. PREDSTAVNISTVO CASAGRANDE EXPORT–IMPORT, 2 A Kosovska, Surcin 11271, Serbia; Company Number 29025576 [SDNTK].

In addition, OFAC has made updates to the record for the following individual previously designated pursuant to the Kingpin Act:

KELMENDI, Naser (a.k.a. KELJMENDI, Naser Meto), Edhema Eke Dzubura 20, Ilidza, Bosnia and Herzegovina; Velika Aleja Street, no. 2, Ilidza, Bosnia and Herzegovina; DOB 15 Feb 1957; POB Pec, Kosovo; citizen Bosnia and Herzegovina; Passport 4843868 (Bosnia and Herzegovina); National ID No. 1502957172694 (Bosnia and Herzegovina) (individual) [SDNTK]

The listing for this individual now appears as follows:

KELMENDI, Naser (a.k.a. KELJMENDI, Naser Meto), Edhema Eke Dzubura 20, Ilidza, Bosnia and Herzegovina; Velika Aleja Street, no. 2, Ilidza, Bosnia and Herzegovina; DOB 15 Feb 1957; POB Pec, Kosovo; citizen Bosnia and Herzegovina; Passport 4843868 (Bosnia and Herzegovina); National ID No. 1502957172694 (Bosnia and Herzegovina) (individual) [SDNTK] *(Linked To: DONATA COMPANY D.O.O.; Linked To: N.P.T.T. DONA–SHELL; Linked To: HOTEL CASA GRANDE–SARAJEVO, BOSNIA AND HERZEGOVINA; Linked To: HOTEL CASA GRANDE–ULCINJ, MONTENEGRO; Linked To: PREDSTAVNISTVO CASAGRANDE EXPORT–IMPORT).*

Dated: March 24, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–07635 Filed 4–1–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of Application Packages for the 2016 Tax Counseling for the Elderly (TCE) Program.

DATES: Application instructions are available electronically from the IRS on May 1, 2015 by visiting: IRS.gov (key word search—''TCE'') or through Grants.gov. The deadline for submitting an application package to the IRS for the Tax Counseling for the Elderly (TCE) Program is May 31, 2015. However, because this date falls on a non-workday the deadline is being extended until Monday, June 1, 2015. All applications must be submitted through Grants.gov.

ADDRESSES: Internal Revenue Service, Grant Program Office, 5000 Ellin Road, NCFB C4–110, SE:W:CAR:SPEC:FO:GPO, Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Grant Program Office via their email address at *tce.grant.office@irs.gov*.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year. Because applications are being solicited before the FY 2016 budget has been approved, cooperative agreements will be entered into subject to the appropriation of funds.

Dated: March 23, 2015.

Mikki Betker,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2015–07588 Filed 4–1–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee

Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Veterans Rural Health Advisory Committee will meet on April 21–22, 2015, in Room 156, at the VA Medical Center, 17273 State Route 104, Chillicothe, Ohio from 8:30 a.m. to 5 p.m. on both days. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas, and discusses ways to improve and enhance VA services for these Veterans.

The agenda will include updates from the Committee Chairman and the Director of the Veterans Health Administration (VHA) Office of Rural Health (ORH), as well as presentations on general health care access and quality topics.

Public comments will be received at 4:30 p.m. on April 22, 2015. Interested parties should contact Mr. Elmer D. Clark, by mail at 810 Vermont Avenue, Mail Code 10P1R, Washington, DC 20420, or via email at *VRHAC@va.gov*, or by fax at (202) 632–8609. Individuals scheduled to speak are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record.

Dated: March 27, 2015.

Rebecca Schiller,

Committee Management Officer.

[FR Doc. 2015–07509 Filed 4–1–15; 8:45 am]

BILLING CODE CODE 8320–01–P

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Part II

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Energy Conservation Standards for Pumps; Proposed Rules

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2011–BT–STD–0031]

RIN 1904–AC54

Energy Conservation Program: Energy Conservation Standards for Pumps

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

ACTION: Notice of proposed rulemaking (NOPR) and public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, sets forth a variety of provisions designed to improve energy efficiency. Part C of Title III, which for editorial reasons was re-designated as Part A–1 upon incorporation into the U.S. Code, establishes the ''Energy Conservation Program for Certain Industrial Equipment.'' The covered equipment includes pumps. In this document, DOE proposes to establish new energy conservation standards for pumps and announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Meeting: DOE will hold a public meeting on Wednesday, April 29, 2015, from 2 p.m. to 5 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VIII Public Participation for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than June 1, 2015. See section VIII Public Participation for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Persons can attend the public meeting via webinar. For more information, refer to the Public Participation section near the end of this NOPR.

Any comments submitted must identify the NOPR for Energy Conservation Standards for pumps, and provide docket number EE–2011–BT–STD–0031 and/or regulatory information number (RIN) number 1904–AC54. Comments may be submitted using any of the following methods:

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

2. *Email: Pumps2011STD0031@ee.doe.gov* . Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov*.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VIII of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *www.regulations.gov/#!docketDetail;D=EERE-2011-BT-STD-0031*. This Web page will contain a link to the docket for this NOPR on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section VIII for further information on how to submit comments through *www.regulations.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–1692. Email: *pumps@ee.doe.gov*.

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–9507. Email: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of the Proposed Rule

The proposed standards for pumps (collectively, ''pumps'') set forth in today's rule reflect the consensus of a stakeholder negotiation. A working group was established under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA). (5 U.S.C. App. 2; 5 U.S.C. 561–570, Pub. L. 104–320.) The purpose of the working group was to discuss and, if possible, reach consensus on proposed standards for pump energy efficiency. On June 19, 2014, the working group successfully reached consensus on proposed energy conservation standards for specific rotodynamic, clean water pumps used in a variety of commercial, industrial, agricultural, and municipal applications. See section II.B for further discussion of the working group, section II.C for the industry sectors covered, and section III.C for a description of the relevant pumps.

DOE's proposed standards, which are consistent with the working group recommendations, are shown in Table I.1 and consist of pump energy index (PEI) values. Under the proposed standards, a pump model would be compliant if its PEI rating is less than or equal to the proposed standard. PEI is defined as the pump efficiency rating (PER) for a given pump model (at full impeller diameter), divided by a calculated minimally compliant PER for the given pump model. PER is defined as a weighted average of the electric input power supplied to the pump over a specified load profile, represented in units of horsepower (hp).

The minimally compliant PER is unique to each pump model and is a function of specific speed (a dimensionless index describing the geometry of the pump) and each pump model's flow at best efficiency point (BEP), as well as a specified C-value. A C-value is the translational component of a three-dimensional polynomial equation that describes the attainable hydraulic efficiency of pumps as a function of flow at BEP, specific speed, and C-value. Thus, when a C-value is used to define an efficiency level, that efficiency level can be considered equally attainable across the full scope of flow and specific speed encompassed by this proposed rule.

A certain percentage of pumps currently on the market will not meet each efficiency level. That percentage can be referred to as the efficiency percentile. For example, if 10% of the

pumps on the market do not meet a specified efficiency level, that efficiency level represents the lower 10th percentile of efficiency. The efficiency percentile is an effective descriptor of the impact of a selected efficiency level (selected C-value) on the current market.

The C-values proposed by DOE in Table I.1 correspond to the lower 25th percentile of efficiency for End Suction Close-Coupled (ESCC), End Suction Frame Mounted/Own Bearings (ESFM), In-line (IL), and Vertical Turbine Submersible (VTS) equipment classes. The C-values for the radially split, multi-stage, vertical, in-line, diffuser casing (RSV) equipment class were targeted to harmonize with the standards recently enacted in the European Union,[1] as models in the RSV equipment class are known to be global platforms with no differentiation between products sold into the United States and European Union markets.[2] Section III.D describes the PEI metric in further detail.

These proposed standards, if adopted, would apply to all equipment listed in Table I.1 and manufactured in, or imported into, the United States on or after the date four years after the publication of any final rule for this rulemaking.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR PUMPS

Equipment class *	Proposed standard level ** (PEI)	Efficiency percentile	Proposed C-values
ESCC.1800.CL	1.00	25	128.47
ESCC.3600.CL	1.00	25	130.42
ESCC.1800.VL	1.00	25	128.47
ESCC.3600.VL	1.00	25	130.42
ESFM.1800.CL	1.00	25	128.85
ESFM.3600.CL	1.00	25	130.99
ESFM.1800.VL	1.00	25	128.85
ESFM.3600.VL	1.00	25	130.99
IL.1800.CL	1.00	25	129.30
IL.3600.CL	1.00	25	133.84
IL.1800.VL	1.00	25	129.30
IL.3600.VL	1.00	25	133.84
RSV.1800.CL	1.00	† 0	129.63
RSV.3600.CL	1.00	† 0	133.20
RSV.1800.VL	1.00	† 0	129.63
RSV.3600.VL	1.00	† 0	133.20
VTS.1800.CL	1.00	25	134.13
VTS.3600.CL	1.00	25	134.13
VTS.1800.VL	1.00	25	134.13
VTS.3600.VL	1.00	25	134.13

* Equipment class designations consist of a combination (in sequential order separated by periods) of: (1) An equipment family (ESCC = end suction close-coupled, ESFM = end suction frame mounted, IL = inline, RSV = radially split, multi-stage, vertical, in-line, diffuser casing, VTS = vertical turbine submersible); (2) a nominal design speed (1800 = 1800 revolutions per minute (rpm), 3600 = 3600 rpm); and (3) an operating mode (CL = constant load, VL = variable load). For example, ''ESCC.1800.CL'' refers to the ''end suction close-coupled, 1,800 rpm, constant load'' equipment class. See discussion in chapter 5 of the NOPR technical support document (TSD) for a more detailed explanation of the equipment class terminology.

** A pump model is compliant if its PEI rating is less than or equal to the proposed standard.

† The standard level for RSV was set at a level that harmonized with the current European Union energy conservation standard level. See discussion in section IV.A.2.a for more detail regarding matters related to harmonization.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of pumps, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[3] The average LCC savings are positive for all equipment classes for which consumers would be impacted by the proposed standards[4] and the PBP is less than the average lifetime of pumps, which is estimated to range between 11 and 23 years depending on equipment class, with an average of 15 years (see section IV.F.2.g).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF PUMPS

Equipment class	Average LCC savings (2013$)	Simple payback period (years)
ESCC.1800	$164	2.2
ESCC.3600	92	1.0
ESFM.1800	173	2.8
ESFM.3600	547	0.8

[1] Council of the European Union. 2012. Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps. Official Journal of the European Union. L 165, 26 June 2012, pp. 28–36.

[2] Market research, limited confidential manufacturer data, and direct input from the CIP working group indicate that RSV models sold in the United States market are global platforms with hydraulic designs equivalent to those in the European market.

[3] The average LCC savings are measured relative to the base-case efficiency distribution, which depicts the market in the compliance year (see section IV.H.2). The simple PBP, which is designed to compare specific pump efficiency levels, is measured relative to the baseline model (see section IV.C.1.b).

[4] DOE also calculates a distribution of LCC savings; the percentage of consumers that would have negative LCC savings (net cost) under the proposed standards is shown in section V.B.1.a.

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF PUMPS—Continued

Equipment class	Average LCC savings (2013$)	Simple payback period (years)
IL.1800	149	2.8
IL.3600	139	1.9
RSV.1800	N/A	N/A
RSV.3600	N/A	N/A
VTS.1800	N/A	N/A
VTS.3600	7.2	4.2

Notes: DOE relied on available data for bare pumps with no information on configuration. Therefore, DOE conducted analysis at the level of equipment type and nominal design speed only. DOE is proposing identical standards for both CL and VL equipment classes. Economic results are not presented for RSV classes because the proposed standard is at the baseline. For the VTS.1800 class, which has a small market share, DOE [did not conduct a separate analysis for this class and is instead proposing to adopt the same levels as for the VTS.3600 class.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year of the manufacturer impacts analysis through the end of the analysis period (2015 to 2049). Using a real discount rate of 11.8 percent,[5] DOE estimates that INPV for manufacturers of pumps is $121.4 million in 2013$ for the base case. Under the proposed standards, DOE expects that INPV will change by −32.5 percent to 6.9 percent. Industry conversion costs total $78.4 million.

C. National Benefits[6]

DOE's analyses indicate that the proposed standards would save a significant amount of energy. The lifetime savings for pumps purchased in the 30-year period that begins in the first full year of compliance[7] with new standards (2020–2049) amount to 0.28 quadrillion Btu (quads).[8] This is a savings of one percent relative to the energy use of this equipment in the base case without new standards.

The cumulative net present value (NPV) of total consumer costs and savings of the proposed standards for pumps ranges from $0.41 billion (at a 7-percent discount rate) to $1.11 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for equipment purchased in 2020–2049.

In addition, the proposed standards would have significant environmental benefits. The energy savings would result in cumulative emission reductions of 16 million metric tons (Mt)[9] of carbon dioxide (CO_2), 77 thousand tons of methane (CH_4), 13 thousand tons of sulfur dioxide (SO_2), 25 thousand tons of nitrogen oxides (NO_X), 0.23 thousand tons of nitrous oxide (N_2O), and 0.04 tons of mercury (Hg).[10] The cumulative reduction in CO_2 emissions through 2030 amounts to 2.5 Mt, which is equivalent to the emissions associated with the annual electricity use of 0.36 million homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[11] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values, DOE estimates the present monetary value of the CO_2 emissions reduction is between $0.11 billion and $1.6 billion. DOE also estimates the present monetary value of the NO_X emissions reduction, is $13 million at a 7-percent discount rate and $30 million at a 3-percent discount rate.[12]

Table 1.3 summarizes the national economic costs and benefits expected to result from the proposed standards for pumps.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR PUMPS *

Category	Present value (billion 2013$)	Discount rate (%)
Benefits		
Operating Cost Savings	0.6	7
	1.4	3
CO_2 Reduction Monetized Value ($12.0/t case) **	0.1	5
CO_2 Reduction Monetized Value ($40.5/t case) **	0.5	3
CO_2 Reduction Monetized Value ($62.4/t case) **	0.8	2.5
CO_2 Reduction Monetized Value ($119/t case) **	1.6	3

[5] DOE estimated draft financial metrics, including the industry discount rate, based on data from Securities and Exchange Commission (SEC) filings. DOE presented the draft financial metrics to manufacturers in MIA interviews and adjusted those values based on feedback from industry. The complete set of financial metrics and more detail about the methodology can be found in section 12.4.3 of TSD chapter 12.

[6] All monetary values in this section are expressed in 2013 dollars and are discounted to 2015.

[7] In this case, the compliance date of any final standards is estimated to be very late 2019, so the analysis period begins in 2020.

[8] A quad is equal to 10^{15} British thermal units (Btu).

[9] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[10] DOE calculated emissions reductions relative to the *Annual Energy Outlook 2014* (*AEO 2014*) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2013.

[11] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*. Interagency Working Group on Social Cost of Carbon, United States Government. May 2013; revised November 2013. *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*.

[12] DOE is currently investigating valuation of avoided Hg and SO_2 emissions.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR PUMPS *—Continued

Category	Present value (billion 2013$)	Discount rate (%)
NO_X Reduction Monetized Value (at $2,684/ton) **	0.01	7
	0.03	3
Total Benefits †	1.1	7
	1.9	3
Costs		
Incremental Installed Costs	0.2	7
	0.3	3
Total Net Benefits		
Including Emissions Reduction Monetized Value †	0.9	7
	1.6	3

* This table presents the costs and benefits associated with pumps shipped in 2020–2049. These results include benefits to consumers accruing after 2049 from equipment purchased in 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers from the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.5/t case).

The benefits and costs of today's proposed standards, for equipment sold in 2020–2049, can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value of the benefits from consumer operation of equipment that meets the new or amended standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[13]

Although combining the values of operating savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of pumps shipped in 2020–2049. The SCC values, on the other hand, reflect the present value of some future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.5/t in 2015, the cost of the standards proposed in today's rule is $16.9 million per year in increased equipment costs, while the benefits are $60 million per year in reduced equipment operating costs, $29 million in CO_2 reductions, and $1.3 million in reduced NO_X emissions. In this case, the net benefit amounts to $73 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.5/t in 2015, the cost of the standards proposed in today's rule is $17.5 million per year in increased equipment costs, while the benefits are $81 million per year in reduced operating costs, $29 million in CO_2 reductions, and $1.7 million in reduced NO_X emissions. In this case, the net benefit amounts to $94 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR PUMPS

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Operating Cost Savings	7%	60	54	67.
	3%	81	72	93.
CO_2 Reduction Monetized Value ($12.0/t case) *	5%	8	8	9.

[13] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total customer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR PUMPS—Continued

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
CO_2 Reduction Monetized Value ($40.5/t case) *	3%	29	27	31.
CO_2 Reduction Monetized Value ($62.4/t case) *	2.5%	42	39	46.
CO_2 Reduction Monetized Value ($119/t case) *	3%	89	83	97.
NO_X Reduction Monetized Value (at $2,684/ton) **	7%	1.3	1.3	1.4.
	3%	1.7	1.6	1.9.
Total Benefits †	7% plus CO_2 range	69 to 150	63 to 138	78 to 166.
	7%	90	82	100.
	3% plus CO_2 range	91 to 172	81 to 156	104 to 192.
	3%	112	100	126.
Costs				
Consumer Incremental Equipment Costs	7%	16.9	18.6	17.2.
	3%	17.5	19.5	17.7.
Net Benefits				
Total †	7% plus CO_2 range	53 to 133	44 to 119	61 to 148.
	7%	73	63	83.
	3% plus CO_2 range	74 to 155	62 to 136	86 to 174.
	3%	94	80	108.

* This table presents the annualized costs and benefits associated with pumps shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2014* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental equipment costs reflect a constant rate in the Primary Estimate, an increase rate in the Low Benefits Estimate, and a decline rate in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.2.a.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with 3-percent discount rate ($40.5/t case). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that equipment achieving these standard levels is already commercially available for all equipment classes covered by today's proposal. Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered higher and lower energy efficiency levels as trial standard levels, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of these energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking, DOE may adopt energy efficiency levels presented in this notice that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying today's proposal, as well as some of the relevant historical background related to the establishment of standards for pumps.

A. Authority

Title III of the Energy Policy and Conservation Act of 1975 ''EPCA''), Public Law 94–163, codified at 42 U.S.C. 6291 *et seq.,* sets forth a variety of provisions designed to improve energy efficiency. Part C of Title III, which for editorial reasons was redesignated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317, as codified), establishes the ''Energy Conservation Program for Certain Industrial Equipment.'' The covered equipment includes pumps, the subject of today's notice. (42 U.S.C. 6311(1)(A).) [14] There are currently no energy conservation standards for pumps.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a).) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B) and 6316(a).)

DOE's energy conservation program for covered equipment consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or

[14] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act of 2012, Public Law 112–210 (Dec. 18, 2012).

estimated annual operating cost of each covered product. (42 U.S.C. 6314.) Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their equipment comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6314(d).) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. *Id.* DOE has proposed a test procedure for pumps through a separate rulemaking. Any final test procedures would appear at title 10 of the Code of Federal Regulations (CFR) part 431.

When setting standards for the equipment addressed by today's notice, EPCA prescribes specific statutory criteria for DOE to consider. See generally 42 U.S.C. 6313(a)(6)(A)–(C), 6295(o), and 6316(a). As indicated previously, any new or amended standard for covered equipment must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. Moreover, DOE may not prescribe a standard: (1) For certain equipment, including pumps, if no test procedure has been established for the equipment, or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. 42 U.S.C. 6295(o); 6316(a). In considering whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;

3. The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the covered equipment likely to result from the imposition of the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

6. The need for national energy and water conservation; and

7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I) through (VII) and 6316(a).)

The Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product- or equipment-type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4) and 6316(a).)

There is a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a).)

Additionally, EPCA specifies requirements when promulgating a standard for a type or class of covered equipment that has two or more subcategories. DOE must specify a different standard level than that which applies generally to such type or class of equipment for any group of covered equipment that have the same function or intended use if DOE determines that equipment within such group (A) consume a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) have a capacity or other performance-related feature which other equipment within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1) and 6316(a).) In determining whether a performance-related feature justifies a different standard for a group of equipment, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2) and 6316(a).)

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a) through (c) and 6316(a).) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

B. Background

DOE does not currently have a test procedure or energy conservation standards for pumps. In considering whether to establish standards for pumps, DOE issued a Request for Information (RFI) on June 13, 2011. (76 FR 34192.) DOE received several comments in response to the RFI. In December 2011, DOE received a letter from the Appliance Standards Awareness Project (ASAP) and the Hydraulic Institute indicating that efficiency advocates (including ASAP, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, and Northwest Energy Efficiency Alliance) and pump manufacturers (as represented by the Hydraulic Institute) had initiated discussions regarding potential energy conservation standards for pumps. (EERE–2011–BT–STD–0031–0011.) In subsequent letters in March and April 2012, and in a meeting with DOE in May 2012, the stakeholders reported on a tentative path forward on energy conservation standards for water pumps, inclusive of the motor and controls, and certification and labeling. (EERE–2011–BT–STD–0031–0010 and –0012.)

On February 1, 2013, DOE published a notice in the **Federal Register** that announced the availability of the ''Commercial and Industrial Pumps Energy Conservation Standard Framework Document,'' solicited comment on the document, and invited all stakeholders to a public meeting to discuss the document. (78 FR 7304.) The Framework Document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for pumps, addressed stakeholder comments related to the RFI, and identified and solicited comment on various issues to be resolved in the rulemaking. (EERE–2011–BT–STD–0031–0013.)

DOE held the framework public meeting on February 20, 2013 and received many comments that helped identify and resolve issues pertaining to pumps relevant to this rulemaking.

These comments are discussed in subsequent sections of this notice.

As noted previously, DOE established a working group to negotiate proposed energy conservation standards for pumps. Specifically, on July 23, 2013, DOE issued a notice of intent to establish a commercial and industrial pumps working group (''CIP Working Group''). (78 FR 44036.) The working group was established under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA). (5 U.S.C. App. 2; 5 U.S.C. 561–570, Pub. L. 104–320.) The purpose of the working group was to discuss and, if possible, reach consensus on proposed standard levels for the energy efficiency of pumps. The working group was to consist of representatives of parties having a defined stake in the outcome of the proposed standards, and the group would consult as appropriate with a range of experts on technical issues.

DOE received 19 nominations for membership. Ultimately, the working group consisted of 16 members, including 1 member from the ASRAC and 1 DOE representative. (See Table II.1) The working group met in-person during 7 sets of meetings held December 18–19, 2013 and January 30–31, March 4–5, March 26–27, April 29–30, May 28–29, and June 17–19, 2014.

TABLE II.1—ASRAC PUMP WORKING GROUP MEMBERS AND AFFILIATIONS

Member	Affiliation
Lucas Adin	U.S. Department of Energy.
Tom Eckman	Northwest Power and Conservation Council (ASRAC Member).
Robert Barbour	TACO, Inc.
Charles Cappelino	ITT Industrial Process.
Greg Case	Pump Design, Development and Diagnostics.
Gary Fernstrom	Pacific Gas & Electric Company, San Diego Gas & Electric Company, Southern California Edison, and Southern California Gas Company.
Mark Handzel	Xylem Corporation.
Albert Huber	Patterson Pump Company.
Joanna Mauer	Appliance Standards Awareness Project.
Doug Potts	American Water.
Charles Powers	Flowserve Corporation, Industrial Pumps.
Howard Richardson	Regal Beloit.
Steve Rosenstock	Edison Electric Institute.
Louis Starr	Northwest Energy Efficiency Alliance.
Greg Towsley	Grundfos USA.
Meg Waltner	Natural Resources Defense Council.

To facilitate the negotiations, DOE provided analytical support and supplied the group with a variety of analyses and presentations, all of which are available in the docket (*www.regulations.gov/#!docketDetail;D=EERE-2013-BT-NOC-0039*). These analyses and presentations, developed with direct input from the working group members, include preliminary versions of many of the analyses discussed in today's NOPR, including a market and technology assessment; screening analysis; engineering analysis; energy use analysis; markups analysis; life cycle cost and payback period analysis; shipments analysis; national impact analysis; and manufacturer impact analysis.

On June 19, 2014, the working group reached consensus on proposed energy conservation standards for specific types of pumps. The working group assembled their recommendations into a term sheet (See EERE–2013–BT–NOC–0039–0092) that was presented to, and approved by the ASRAC on July 7, 2014. DOE considered the approved term sheet, along with other comments received during the rulemaking process, in developing proposed energy conservation standards.

C. Relevant Industry Sectors

The energy conservation standards proposed in this NOPR will primarily affect the pump and pumping equipment manufacturing industry. The North American Industry Classification System (NAICS) classifies this industry under code 333911. DOE identified 86 manufacturers of pumps covered under this proposed rule, with 56 of those being domestic manufacturers. The leading U.S. industry association for the pumps covered under this proposed rule is the Hydraulic Institute (HI).

III. General Discussion

In developing this NOPR, DOE reviewed the recommendations in the term sheet produced by the CIP Working Group, as well as the 13 comments it received in response to the February 2013 Framework Document. Commenters included: Engineered Software, Inc.; Richard Shaw; Grundfos Pumps Corporation; the Hydraulic Institute (HI); Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Gas Company, and Southern California Edison (the preceding four commenters hereafter referred to collectively as the CA IOUs); National Fire Protection Association (NFPA); Air-Conditioning, Heating, and Refrigeration Institute (AHRI); Colombia Engineering; Earthjustice; Edison Electric Institute (EEI); The Appliance Standards Awareness Project (ASAP), Alliance to Save Energy (ASE), American Council for an Energy Efficient Economy (ACEEE), Earthjustice, and Natural Resources Defense Council (NRDC) (the preceding five commenters hereafter referred to collectively as the Advocates); and the Northwest Energy Efficiency Alliance and the Northwest Power and Conservation Council (hereafter referred to as NEEA/NPCC). DOE addressed all relevant stakeholder comments and requests throughout this NOPR. DOE notes that comments addressed in this NOPR reflect the views of the stakeholders at the close of the framework comment period in May 2013. DOE recognizes that the working group's ASRAC-approved term sheet may represent views that have progressed since the time of the framework comments. As such, when addressing comments, DOE has noted where stakeholder views have changed.

A. Rulemaking Approach

1. Harmonization

In response to the Framework Document, HI and Grundfos recommended that DOE harmonize its efforts with the approach followed by the European Union (EU). (HI, No. 25 at p. 2; Grundfos, No. 24 at p. 2.) HI noted that harmonizing with the EU provides a logical and consistent path forward for U.S. manufacturers who have international operations and who export equipment from the U.S. to markets worldwide. *Id.* Grundfos also suggested that DOE should harmonize with the EU on specific issues, including: (1) nomenclature and definitions, (2) test procedures, and (3) use of the Minimum Efficiency Index (MEI), including the applicable equation and constants. Grundfos also suggested limiting this initial rulemaking to address 1 potential standards for clean water pumps (as opposed to expanding the scope to

include other pump types). *Id.* DOE notes that throughout the course of negotiations, the CIP Working Group members, including HI and Grundfos, made recommendations that in many cases did not completely harmonize with the EU approach. The level of harmonization reflected in this NOPR and the associated test procedure NOPR directly results from these working group recommendations. This is discussed with more specificity in the applicable sections of the preamble.

2. Regulatory Options

In the Framework Document, DOE considered the following options for regulation:

1. Defining and establishing standards for the pump exclusive of the motor (*i.e.,* the bare pump), except possibly for submersible pumps. This option follows the current EU approach for clean water pumps.

2. Defining and establishing standards for the pump inclusive of the motor and controls, if the pump is sold with them. Using this approach, each pump equipment class would be sub-divided into two categories: (1) Without variable-speed drive (VSD) (pump is sold with or without a motor), and (2) with VSD (VSD included only if the pump is sold with a motor).[15]

3. Defining and establishing standards for the pump inclusive of the motor, if the pump is sold with a motor, and considering the VSD as a design option to improve the efficiency of pumps sold with motors. Each pump equipment class could be divided into two further categories: (1) without motor (or VSD), and (2) with motor (with or without VSD). (EERE–2011–BT–0031–0013)

DOE also discussed the metrics it was considering for each option, shown in Table III.1.

TABLE III.1—TENTATIVE METRICS FOR PUMP REGULATORY OPTIONS AS PROPOSED IN FRAMEWORK DOCUMENT

Regulatory option	Equipment class set	Metric
1. Bare Pumps	N/A	Pump efficiency at three points.
2. Pumps inclusive of motor and VSD	Pumps Without VSD (with or without motor)	Pump efficiency at three points.
	Pumps With VSD	Overall efficiency at three points.
3. Pumps inclusive of motor, with VSD as a design option for all pumps sold with motors.	Pumps Without Motor	Pump efficiency at three points.
	Pumps With Motor (with or without VSD)	Potentially based on motor/VSD input power at multiple load points.*

* DOE stated that it may also consider the use of pump efficiency as an additional labeling requirement.

In response, commenters recommended various approaches for dealing with pumps inclusive of the motor and/or controls:

• The Advocates, NEEA/NPCC, and the CA IOUs recommended a modified regulatory option 3, in which pumps sold with motors below a certain horsepower (hp) limit might be required to be sold with VSDs. (Advocates, No. 32 at pp. 5–6; NEEA/NPVCC, No. 33 at p. 2; CA IOUs, No. 26 at p. 3.) The CA IOUs did not see the value in having an equipment class just for pump+motor+VSD (as in regulatory option 2). (CA IOUs, No. 26 at p. 3.)

• HI and Grundfos both supported an approach where the pump would be regulated inclusive of the motor and controls, which would, in their view, be likely to achieve significantly greater savings than an approach based only on the bare pump. (Grundfos, No. 24 at p. 1; HI, No. 25 at p. 2.) HI believes that a large majority of systems can benefit from VSDs. (HI, No. 25 at p. 28.) HI and Grundfos agreed that system feedback control is necessary in this approach. (Grundfos, No. 24 at p. 9; HI, No. 25 at p. 27.) Specifically, HI and Grundfos proposed a two-prong approach: that all pumps be required to meet the MEI (Minimum Efficiency Index, based on the metric of pump efficiency), while pumps sold with motors and VSDs would also have another electric input power-based metric as a label or standard. (HI, No. 25 at p. 2; Grundfos, No. 24 at p.10.) The HI and Grundfos (European) approaches are similar but not identical.

• EEI stated that analyzing energy (and setting standards) on the basis of pumps including their motors is the preferred approach, although EEI was not opposed to establishing pump standards based on 'pump only' performance characteristics. EEI did not support establishing standards based on pump performance with a VSD controller, as pumps are used in a variety of applications and not all are a good fit with VSDs. EEI also noted that it was unaware of any other DOE rulemaking where an optional, external component has been proposed as part of the test procedure or standard. (EEI, No. 31 at p. 3.)

• AHRI noted that unless DOE develops coverage of all possible combinations of pumps inclusive of the motor and controls, a regulatory regime may inadvertently cover only 10 percent of the possible combinations that are in use. (AHRI, No. 28 at pp.1–2.)

The CIP Working Group ultimately recommended an alternative regulatory option that considers pumps inclusive of motors and controls, but applies essentially the same metric to all pumps, regardless of how they are sold. (EERE–2013–BT–NOC–0039–0092; Recommendations Nos. 1, 9, and 11.) DOE's proposal is consistent with the recommendation of the working group. The details of the proposed regulatory structure are discussed in the remainder of this NOPR.

DOE recognizes that some pumps, particularly in the agricultural sector, may be sold and operated with non-electric drivers, such as engines, steam turbines, or generators. The CIP Working Group recommended that pumps sold with non-electric drivers be rated as a bare pump, excluding the energy performance of the non-electric driver. (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #3 at p. 2) DOE believes that there is insufficient technical merit or potential for additional energy savings to justify the additional burden associated with rating and certifying pumps sold with non-electric drivers inclusive of those drivers. This is described in more detail in the test procedure NOPR.

B. Definition of Covered Equipment

Although pumps are listed as covered equipment under 42 U.S.C. 6311(1)(A), the term ''pump'' is not defined in EPCA. In the test procedure NOPR, DOE proposed a definition for ''pump'' clarify what would constitute the

[15] For the purposes of this rulemaking, ''VSD'' will be used when discussing speed control of pumps in general. Variable frequency drive (VFD) will be used when specifically discussing continuous control of AC induction motors.

covered equipment. The definition reflects the consensus reached by the CIP Working Group in its negotiations: ''Pump'' means equipment designed to moves liquids (which may include entrained gases, free solids, and totally dissolved solids) by physical or mechanical action and includes a bare pump and, if included by the manufacturer at the time of sale, mechanical equipment, driver and controls. In the test procedure NOPR, DOE also proposed definitions for ''bare pump,'' ''mechanical equipment,'' ''driver,'' and ''controls,'' as recommended by the CIP Working Group.

C. Scope of the Energy Conservation Standards in this Rulemaking

DOE is considering applying a bifurcated approach that would set out the scope of the types of pumps that would be subject to the test procedure and energy conservation standards, along with potential energy conservation standards that would apply to these pumps. The pumps for which DOE is proposing to set energy conservation standards for in this rulemaking are consistent with the CIP Working Group's recommendations as well as the proposals in the test procedure NOPR, and consist of the following categories:

- End suction close coupled,
- End suction frame mounted/own bearings,
- In-line,
- Radially split, multi-stage, vertical, in-line, diffuser casing, and
- Vertical turbine submersible.

DOE proposed definitions for these pumps in the test procedure NOPR.

For the equipment categories included in this rulemaking, DOE proposes to consider energy conservation standards only for clean water pumps. In the test procedure, DOE proposed to define ''clean water pump'' as a pump that is designed for use in pumping water with a maximum non-absorbent free solid content of 0.25 kilograms per cubic meter, and with a maximum dissolved solid content of 50 kilograms per cubic meter, provided that the total gas content of the water does not exceed the saturation volume, and disregarding any additives necessary to prevent the water from freezing at a minimum of −10 °C.

In the test procedure NOPR, DOE also proposed to define several kinds of pumps that are clean water pumps, as defined, but would not be subject to the proposed test procedure, in accordance with CIP Working Group recommendations. DOE proposes that these pumps would also not be subject to the proposed energy conservation standards:

(a) Fire pumps;
(b) Self-priming pumps;
(c) Prime-assist pumps;
(d) Sealless pumps;
(e) Pumps designed to be used in a nuclear facility subject to 10 CFR part 50—Domestic Licensing of Production and Utilization Facilities; and
(f) A pump meeting the design and construction requirements set forth in Military Specification MIL–P–17639F, ''Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use'' (as amended).

The test procedure NOPR included further definitions for ''fire pump,'' ''self-priming pump,'' ''prime-assist pump,'' and ''sealless pump.''

For pumps meeting the definition of a clean water pump, with certain exceptions as noted above, DOE proposes to set energy conservation standards only for pumps with the following characteristics, which are identical to those for which DOE proposed the test procedure apply and are in accordance with CIP Working Group recommendations:

- 1–200 hp (shaft power at BEP at full impeller diameter for the number of stages required for testing to the standard);
- 25 gallons/minute and greater (at BEP at full impeller diameter);
- 459 feet of head maximum (at BEP at full impeller diameter);
- Design temperature range from −10 to 120 degrees C;
- Pumps designed to operate with either: (*1*) a 2- or 4-pole induction motor, or (*2*) a non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 revolutions per minute and/or 1,440 and 2,160 revolutions per minute; [16] and
- 6 inch or smaller bowl diameter (VTS/HI VS0).

DOE also proposed in the test procedure that all pump models must be rated and certified in a full impeller configuration, as recommended by the CIP Working Group. (See EERE–2013–BT–NOC–0039–0092, Recommendation No. 7.) [17] DOE proposed a definition for full impeller in its test procedure NOPR.

D. Test Procedure and Metric

DOE is currently conducting a rulemaking to establish a uniform test procedure for determining the energy efficiency of pumps, as well as sampling plans for the purposes of demonstrating compliance with any energy conservation standards for this equipment that DOE adopts. In the test procedure NOPR, DOE proposed to prescribe test methods for measuring the efficiency of pumps, inclusive of motors and/or controls, by measuring the produced hydraulic power and measuring or calculating the shaft power and/or electric input power to the motor or controls. Consistent with the recommendations of the CIP Working Group, DOE proposed that these methods be based on Hydraulic Institute (HI) Standard 40.6–2014, ''Hydraulic Institute Standard for Method for Rotodynamic Pump Efficiency Testing,'' hereinafter referred to as ''HI 40.6–2014.'' (See EERE–2013–BT–NOC–0039–0092, Recommendation No. 10.) DOE proposed additions to HI 40.6–2014 to account for the energy performance of motors and/or controls, which is not addressed in the scope of HI 40.6–2014.

The test procedure NOPR proposes that the energy conservation standards for pumps be expressed in terms of a constant load PEI (PEI_{CL}) for pumps sold without continuous or non-continuous controls (*i.e.,* either bare pumps or pumps sold inclusive of motors but not continuous or non-continuous controls) or a variable load PEI (PEI_{VL}) for pumps sold with continuous or non-continuous controls. The PEI_{CL} or PEI_{VL}, as applicable, describes the weighted average performance of the rated pump, inclusive of any motor and/or controls, at specific load points, normalized with respect to the performance of a ''minimally compliant pump'' (as defined in section III.D.1) without controls. The metrics are defined as follows:

[16] The CIP Working Group recommendation specified pumps designed for nominal 3600 or 1800 revolutions per minute (rpm) driver speed. However, it was intended that this would include pumps driven by non-induction motors as well. DOE believes that its clarification accomplishes the same intent while excluding niche pumps sold with non-induction motors that may not be able to be tested according to the proposed test procedure. The test procedure NOPR contains additional details.

[17] The CIP Working Group made this recommendation because a given pump may be distributed to a particular customer with its impeller trimmed, and impeller trim has a direct impact on a pump's performance characteristics. For any pump sold with a trimmed impeller, it was recommended that the certification rating for that pump model with a full diameter impeller would apply. This approach would limit the overall burden when measuring the energy efficiency of a given pump. In addition, a rating at full impeller diameter will typically be the most consumptive rating for the pump.

$$PEI_{CL} = \left[\frac{PER_{CL}}{PER_{STD}}\right]$$

$$PEI_{VL} = \left[\frac{PER_{VL}}{PER_{STD}}\right]$$

Eq. 1

Where:

- PER_{CL} is the equally-weighted average electric input power to the pump measured (or calculated) at the driver input over a specified load profile, as tested in accordance with the DOE test procedure. This metric applies only to pumps in a fixed speed equipment class. For bare pumps, the test procedure would specify the default motor loss values to use in the calculations of driver input.
- PER_{VL} is the equally-weighted average electric input power to the pump measured (or calculated) at the controller input over a specified load profile as tested in accordance with the DOE test procedure. This metric applies only to pumps in a variable speed equipment class.
- PER_{STD} is the PER rating of a minimally compliant pump (as defined in section III.D.1). It can be described as the allowable weighted average electric input power to the specific pump, as calculated in the test procedure. This metric applies to all equipment classes.

A value of PEI greater than 1.00 would indicate that the pump is less efficient than DOE's energy conservation standard and does not comply, while a value less than 1.00 would indicate that the pump is more efficient than the standard requires.

1. PER Rating of a Minimally Compliant Pump

DOE is considering using a standardized, minimally compliant bare pump, inclusive of a minimally compliant motor, as a reference pump for each combination of flow at BEP and specific speed. The minimally compliant pump would be defined as a function of certain physical properties of the bare pump, such as flow at BEP and specific speed (Ns), as used in the EU MEI approach. In the MEI approach, a single polynomial equation defines a three-dimensional surface over which minimum efficiency varies across a range of both flow and Ns. The EU uses the same equation for all equipment classes, changing only one value—the C-value—to raise or lower the surface along a vertical axis to cut off a certain percentage of pumps, but without adjusting any variables that would change the shape of the efficiency surface. HI and Grundfos supported the EU MEI approach, which eliminates the least efficient pumps by type category. (HI, No. 25 at p. 2; Grundfos, No. 24 at p. 14.) HI added that Ns versus flow rate is the most practical approach to use when predicting efficiency for a particular class of pump types. (HI, No. 25 at p. 37.)

Grundfos recommended use of the EU equation as well as the same C-values used in the EU, which would result in exact harmonization. (Grundfos, No. 24 at p. 14.) However, HI recommended DOE use the EU equation but with an updated C-value. HI added that although a better data fit could be obtained by changing other coefficients, such complexity is not warranted. (HI, No. 25 at pp. 4–5, 32, 40.)

After reviewing stakeholder comments, as well as discussions of the CIP Working Group, DOE is proposing to base its PER rating using the EU's equation, but modifying the C-values as suggested by HI to better reflect the U.S. market. Specifically, DOE proposes to use the same equation used by the EU to develop its standard (*i.e.,* to determine the shape of the efficiency surface), translated to 60 Hz electrical input power and English units [18] as shown in equation 2, to determine the efficiency of a minimally compliant pump:

$$\eta_{pump,STD} = -0.85 * \ln(Q)^2 - 0.38 * \ln(Ns) * \ln(Q) - 11.48 * \ln(Ns)^2 + 13.46 *$$

$$\ln(Q) + 179.80 * \ln(Ns) - (C - 555.6)$$

Eq. 2

Where:

Q = flow at BEP in gallons per minute at 60 Hz,
Ns = specific speed at 60 Hz, and
C = an intercept that is set for the surface based on the speed of rotation and equipment category of the pump model.

The C-value is the translational component of the three-dimensional polynomial equation. Adjusting the C-value increases or decreases the pump efficiency of a minimally compliant pump.

The calculated efficiency of the minimally compliant pump is reflective of the pump efficiency at BEP. This value is adjusted to determine the minimally compliant pump efficiency at 75 percent and 110 percent of BEP flow using the scaling values implemented in the EU regulations for clean water pumps. Namely, the efficiency at 75 percent of BEP flow is assumed to be 94.7 percent of that at 100 percent of BEP flow and the pump efficiency at 110 percent of BEP flow is assumed to be 98.5 percent of that at 100 percent of BEP flow, as shown in equation 3:

[18] The equation to define the minimally compliant pump in the EU is of the same form, but employs different coefficients to reflect the fact that the flow will be reported in m^3/hr at 50 Hz and the specific speed will also be reported in metric units. Specific speed is a dimensionless quantity, but has a different magnitude when calculated using metric versus English units.

$$PER_{STD} = \omega_{75\%}\left(\frac{P_{Hydro,75\%}}{0.947 * \eta_{pump,STD}} + L_{75\%}\right) + \omega_{100\%}\left(\frac{P_{Hydro,100\%}}{\eta_{pump,STD}} + L_{100\%}\right)$$

$$+\omega_{110\%}\left(\frac{P_{Hydro,110\%}}{0.985*\eta_{pump,STD}} + L_{110\%}\right) \quad \textbf{Eq. 3}$$

Where:

ω_i = weighting at each rating point (equal weighting—0.3333);

$P_{Hydro,i}$ = the pump power output at rating point i of the tested pump;

$\eta_{pump,STD}$ = the minimally compliant pump efficiency, as determined in accordance with equation 52;

L_i = the motor losses at each load point i, as determined in accordance with the procedure specified in the DOE test procedure; and

i = 75%, 100%, and 110% of BEP flow, as determined in accordance with the DOE test procedure.

Equation 3 also demonstrates how a ratio of the minimally compliant pump efficiency and the hydraulic output power for the rated pump is used to determine the input power to a minimally compliant pump at each load point. Note that the pump hydraulic output power for the minimally compliant pump is the same as that for the particular pump being evaluated. The calculated shaft input power for the minimally compliant pump at each load point would then be combined with a minimally compliant motor for that default motor construction and horsepower and the default part-load loss curve, described in the proposed DOE test procedure, to determine the input power to the motor at each load point. Under this proposal, the applicable minimum motor efficiency is determined as a function of construction (*i.e.,* open or enclosed), number of poles, and horsepower as specified by DOE's existing energy conservation standards for electric motors at 10 CFR 431.25. PER_{STD} is then determined as the weighted average input power to the motor at each load point, as shown in equation 3.

DOE selected several C-values to establish the efficiency levels analyzed in this proposal. Each C-value and efficiency level accounts for pump efficiency at all load points as well as motor losses, and does so equivalently across the full scope of flow and specific speed encompassed by this proposed rule. See section IV.C.4 for a complete examination of the efficiency levels analyzed in this rulemaking.

E. Compliance Date

Consistent with the recommendations of the CIP Working Group, see EERE–2013–BT–NOC–0039–0092, p. 4, Recommendation No. 9, DOE proposes to require that its standards would apply to equipment manufactured beginning on the date four years after the publication date of the final rule. DOE estimates that any final rule would publish in late 2015, resulting in a compliance date for the standards in late 2019. In its analysis, DOE used an analysis period of 2020 through 2049.

F. Technological Feasibility

1. General

EPCA requires that any new or amended energy conservation standard that DOE prescribes be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible. (42 U.S.C. 6295(o)(2)(A) and 6316(a).) In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. (10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii) through (iv).) Section IV.B of this NOPR discusses the results of the screening analysis for pumps, particularly the designs DOE considered, those it screened out, and those that are the basis for the trial standard levels (TSLs) in this proposed rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt a new or amended standard for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1) and 6316(a).) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for pumps, using the design options that passed the screening analysis.

G. Energy Savings

1. Determination of Savings

EPCA provides that any new or amended energy conservation standard that DOE prescribes shall be designed to achieve the maximum improvement in energy efficiency that DOE determines is economically justified. (42 U.S.C. 6295(o)(2)(A) and (B) and 6316(a).) In addition, in determining whether such standard is technologically feasible and economically justified, DOE may not prescribe standards for certain types or classes of pumps if such standards would not result in significant energy savings. (42 U.S.C. 6295(o)(3)(B) and 6316(a).)

For each TSL, DOE projected energy savings from the pumps that are the subject of this rulemaking purchased in the 30-year period that begins in the first full year of compliance with new standards (2020–2049).[19] The savings are measured over the entire lifetime of pumps purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the base case. The base case represents a projection of energy consumption that currently exists in the marketplace in the absence of mandatory efficiency standards, and it considers market forces and policies that affect demand for more efficient products. To estimate the base case, DOE used data provided

[19] DOE also presents a sensitivity analysis that considers impacts for products shipped in a nine-year period.

by the CIP Working Group, as discussed in section IV.H.2.

DOE used its national impact analysis (NIA) spreadsheet model to estimate energy savings from potential new standards for the equipment that is the subject of this rulemaking. The NIA spreadsheet model (described in section IV.H of this notice) calculates energy savings in site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. To calculate this primary energy savings, DOE derives annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) most recent *Annual Energy Outlook (AEO).*

DOE also estimates full-fuel-cycle (FFC) energy savings, as discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels) and, thus, presents a more complete picture of the impacts of energy efficiency standards. DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered equipment. For more information on FFC energy savings, see section IV.H.1.a.

2. Significance of Savings

As noted above, EPCA prohibits DOE from adopting a standard for a covered product unless such standard would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B) and 6316(a).) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' The energy savings for today's proposed standards (presented in section V.B.3.a) are nontrivial and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

H. Economic Justification

1. Specific Criteria

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a).) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential new or amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation–and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include industry net present value (INPV), which values the industry on the basis of expected future cash flows; cash flows by year; changes in revenue and income; and other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and payback period (PBP) associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared to Increase in Price

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered equipment that are likely to result from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(II) and 6316(a).) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a piece of equipment (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. The LCC analysis requires a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and consumer discount rates. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its analysis, DOE assumes that consumers will purchase the covered equipment in the first year of compliance with new standards.

The LCC savings for the efficiency levels considered in today's NOPR are calculated relative to a base case that reflects projected market trends in the absence of new standards. DOE identifies the percentage of consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. DOE's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III) and 6316(a).) As discussed in section IV.H, DOE uses the NIA spreadsheet to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing classes of equipment, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 6316(a).) Based on data available to DOE, the standards proposed in today's notice would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and 6316(a).) It also directs the Attorney General to determine the impact, if any, of any

lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2) (B)(ii) and 6316(a).) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will respond to the Attorney General's determination in the final rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a).) The energy savings from new or amended standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

New or amended standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the emissions impacts from the proposed standards, and from each TSL it considered, in section V.B.6 of this notice. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(a).) In developing the proposed standard, DOE has also considered the term sheet of recommendations voted on by the CIP Working Group and approved by the ASRAC. (See EERE–2013–BT–NOC–0039–0092.) DOE has weighed the value of such negotiation in establishing the standards proposed in today's rule. DOE has encouraged the negotiation of proposed standard levels, in accordance with the FACA and the NRA, as a means for interested parties, representing diverse points of view, to analyze and recommend energy conservation standards to DOE. Such negotiations may often expedite the rulemaking process. In addition, standard levels recommended through a negotiation may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a).) DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the three-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 6316(a). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.1.c of this proposed rule.

IV. Methodology and Discussion of Comments

DOE used four analytical tools to estimate the impact of today's proposed standards. The first tool is a spreadsheet that calculates LCC and PBP of potential new energy conservation standards. The second tool is a spreadsheet that provides shipments forecasts calculates national energy savings and net present value resulting from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts. Additionally, DOE used output from the latest version of EIA's National Energy Modeling System (NEMS) for the emissions and utility impact analyses. NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector. EIA uses NEMS to prepare its *Annual Energy Outlook (AEO),* a widely known energy forecast for the United States.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information (*e.g.,* manufacturer specification sheets, industry publications) and data submitted by manufacturers, trade associations, and other stakeholders. The subjects addressed in the market and technology assessment for this rulemaking include: (1) Quantities and types of equipment sold and offered for sale; (2) retail market trends; (3) equipment covered by the rulemaking; (4) equipment classes; (5) manufacturers; (6) regulatory requirements and non-regulatory programs (such as rebate programs and tax credits); and (7) technologies that could improve the energy efficiency of the equipment under examination. DOE researched manufacturers of pumps and made a particular effort to identify and characterize small business manufacturers in this sector. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Equipment Classes

When evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that would justify a different standard from that which would apply to other equipment classes. DOE proposes dividing pumps into equipment classes based on the following three factors:

1. Basic pump equipment type,
2. Configuration, and
3. Nominal design speed.

DOE notes that some clean water pumps are sold for use with engines or turbines rather than electric motors, and as such, would use a different fuel type (*i.e.,* fossil fuels rather than electricity). However, because of the small market share of clean water pumps using these fuel types, in the test procedure NOPR, DOE proposed that any pump sold with, or for use with, a driver other than an electric motor would be rated as a bare pump.[20] Therefore, DOE did not

[20] Such a rating would include the hydraulic efficiency of the bare pump as well as the efficiency

Continued

disaggregate equipment classes by fuel type.

As discussed in section III.C, the five pump equipment types considered in this rulemaking, each of which DOE proposes would form the basis for an individual equipment class, include:

- End suction close coupled (ESCC);
- End suction frame mounted/own bearings (ESFM);
- In-line (IL);
- Radially split, multi-stage, vertical, in-line, diffuser casing (RSV); and
- Vertical turbine submersible (VTS).

A pump's configuration is defined by the equipment with which it is sold. Pumps sold inclusive of motors and continuous or non-continuous controls (as defined in the test procedure NOPR), capable of operation at multiple driver shaft speeds are defined as variable load (VL); pumps sold as bare pumps or with motors without such controls, capable only of operation at a fixed shaft speed, are defined as constant load (CL).[21]

In the Framework Document, DOE requested comment on the use of pump design speed as a feature that distinguishes equipment classes as well as the burden associated with testing under multiple speeds. HI reported that often a manufacturer will need to make modifications to pumps that will be run at higher speed to allow for greater bearing loads. These may include changing the bearing frame size or modifying the axial thrust balancing device, which will impact pump efficiency. These potential modifications will vary by equipment class. (HI, No. 25 at p. 37–38.) Grundfos also added that speed is considered during the design of the pump, specifically as it relates to the design of the shaft and bearings. (Grundfos, No.24 at p. 23.) HI noted that pumps designed for different speeds are normally tested over the range of speeds for which the pumps will be offered for sale. A pump manufacturer offering the same pump at different speeds will have to account for any speed-related effects on efficiency and determine if the pump is compliant with the required MEI level at all offered speeds. (HI, No.25 at p. 38.) Both HI and Grundfos recommended harmonizing equipment classes with the EU, which regulates pumps designed for two- and four-pole nominal driver speeds separately, but at 60 Hz frequency. (Grundfos, No. 24 at p. 22; HI, No. 25 at p. 38.)

The CIP Working Group also recommended separate energy efficiency standards for equipment types at the nominal speeds for two- and four-pole motors. (See EERE–2013–BT–NOC–0039–0092, p. 4, Recommendation No. 9.) In its analysis, DOE found that across the market, pumps at each nominal speed demonstrate distinctly different performance. To account for this variability, DOE proposes that for both constant load and variable load pumps, the equipment classes should also be differentiated on the basis of nominal design speed. Within the scope of this proposed rule, pumps may be defined as being designed for either 3,600 or 1,800 rpm nominal driver speeds. Pumps defined as having a 3,600 rpm nominal driver speed are designed to operate with a 2-pole induction motor or with a non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 rpm. Pumps defined as having an 1,800 rpm nominal driver speed are designed to operate with a 4-pole induction motor or with a non-induction motor with a speed of rotation operating range that includes speeds of rotation between 1,440 and 2,160 rpm. Throughout this document, a 3,600 rpm nominal speed is abbreviated as 3600, and a 1,800 rpm nominal speed is abbreviated as 1800.

Taking into account the basic pump equipment type, nominal design speed, and configuration, DOE proposes the following twenty equipment classes for the types of pumps to be addressed by this rulemaking:

- ESCC.1800.CL;
- ESCC.3600.CL;
- ESCC.1800.VL;
- ESCC.3600.VL;
- ESFM.1800.CL;
- ESFM.3600.CL;
- ESFM.1800.VL;
- ESFM.3600.VL;
- IL.1800.CL;
- IL.3600.CL;
- IL.1800.VL;
- IL.3600.VL;
- RSV.1800.CL;
- RSV.3600.CL;
- RSV.1800.VL;
- RSV.3600.VL;
- VTS.1800.CL;
- VTS.3600.CL;
- VTS.1800.VL; and
- VTS.3600.VL.

Chapter 3 of the NOPR TSD provides further detail on the definition of equipment classes.

As noted in section III.D, as proposed in the test procedure NOPR, CL equipment classes would be rated with the PEI_{CL} metric, and VL equipment classes would be rated with the PEI_{VL} metric. For today's NOPR, however, DOE relied on available data for bare pumps. Therefore, DOE's analysis is based on equipment type and nominal design speed only—reported results do not use a ''.CL'' or ''.VL'' designation. DOE is proposing identical standards for both CL and VL equipment classes.

2. Scope of Analysis and Data Availability

DOE collected data to conduct all NOPR analyses for the following equipment classes directly:

- ESCC.1800;
- ESCC.3600;
- ESFM.1800;
- ESFM.3600;
- IL.1800;
- IL.3600; and
- VTS.3600.

The following subsections summarize DOE's approach for the remaining equipment classes:

- RSV.1800;
- RSV.3600; and
- VTS.1800.

a. Radially Split, Multi-Stage, Vertical, In-Line, Diffuser Casing (RSV)

DOE used available information to identify baseline and the maximum technologically feasible (''max-tech'') efficiency levels for this class. Specifically DOE's contractors used market research and confidential manufacturer information to establish a database of RSV models. The DOE contractor database represented models offered for sale in the United States by three major manufacturers of RSV pumps. DOE reviewed the efficiency data for these RSV pumps and found no models to be less efficient than the European Union's MEI 40 standard level, which took effect on January 1, 2015 [22]. Details of this analysis are presented in Chapter 5 of the TSD. This analysis, in conjunction with confidential discussions with manufacturers led DOE to conclude that RSV models sold in the United States market are global platforms with hydraulic designs equivalent to those in the European market. As such, DOE presented this conclusion to the CIP Working Group for consideration, where it was supported and reaffirmed on numerous occasions (See, *e.g.* EERE–

of a minimally-compliant electric motor, as described in section III.D.1.

[21] In the Framework Document, DOE explored identifying specific equipment types that would always be used in a variable load application. In response, HI and Grundfos reported that application, rather than pump type or equipment class, controls whether the pump can be used in a variable load application. (Grundfos, No. 24 at p. 21; HI, No. 25 at p. 37).) The proposal is based on the assumption that a pump sold with speed controls is intended for a variable load application.

[22] Council of the European Union. 2012. Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps. Official Journal of the European Union. L 165, 26 June 2012, pp. 28–36.

2013–BT–NOC–0039–0109 at pp. 91–97, EERE–2013–BT–NOC–0039–0105 at pp. 293–300, EERE–2013–BT–NOC–0039–0106 at pp. 38–40, 62–67, 88–95; EERE–2013–BT–NOC–0039–0108 at pp. 119.)

As a result of the conclusion that RSV models sold in the United States market are global platforms with hydraulic designs equivalent to those in the European market, DOE proposes to set the baseline and max-tech levels equal to those established in Europe. Specifically, the baseline would be the European minimum efficiency standard,[23] and the max-tech level would be the European level referred to as ''the indicative benchmark for the best available technology.'' [24]

Although DOE was able to establish a baseline and max-tech level using aspects of what has already been adopted for the European market, DOE was unable to develop a cost-efficiency relationship or additional efficiency levels for RSV, due to lack of available cost data for this equipment. As a result, DOE has proposed a standard level for RSV that is equivalent to the baseline, consistent with the recommendation of the CIP Working Group. (See EERE–2013–BT–NOC–0039–0092, p. 4, Recommendation No. 9.) Based on the data available and recommendation of the CIP Working Group, DOE concludes that this standard level is representative of the typical minimum efficiency configuration sold in this equipment class, and no significant impact is expected for either the consumers or manufacturers.

Chapter 5 of the NOPR TSD provides complete details on RSV data availability and the development of the baseline efficiency level.

DOE seeks comment on its assumption that all RSV models sold in the United States are based on a global platform. This is identified as Issue 1 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

b. Vertical Turbine Submersible (VTS).1800

Market research, confidential manufacturer data, and direct input from the CIP Working Group indicate that the 4-pole electric motor-driven submersible vertical turbine (VTS.1800) is a very uncommon pump configuration in the marketplace. Existing models are hydraulically identical to the 2-pole-based model, with the only differences being in the type of motor used. This means that every 4-pole-based model is constructed from a bare pump that was originally designed for use with a 2-pole motor. Total shipments for this equipment class are estimated to be less than 1 percent of the VTS.3600 equipment class. On the recommendation of the CIP Working Group (See EERE–2013–BT–NOC–0039–0105 at pp. 300–308; EERE–2013–BT–NOC–0039–0106 at pp. 38–40, 62–67, 88–95), DOE proposes efficiency levels for VTS.1800 equal to that of the VTS.3600 equipment class. Chapter 5 of NOPR TSD provides complete details on the development of the VTS.1800 efficiency levels.

DOE seeks comment on whether any pump models would meet the proposed standard at a nominal speed of 3600 but fail at a nominal speed of 1800 if the same C-values were used for each equipment class. This issue is identified as Issue 2 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

3. Technology Assessment

In the Framework Document, DOE listed the following technologies that can improve pump efficiency:

- Improved hydraulic design;
- Improved surface finish on wetted components;
- Reduced running clearances;
- Reduced mechanical friction in seals;
- Reduction of other volumetric losses;
- Addition of a variable speed drive (VSD);
- Improvement of VSD efficiency; and
- Reduced VSD standby and off mode power usage.

Chapter 3 of the NOPR TSD details each of these technology options. DOE solicited and received numerous stakeholder comments regarding these options in the Framework Document. The following sections summarize the stakeholder comments.

a. General Discussion of Technology Options

In the Framework Document, DOE requested comment on the applicability of the technology options presented and the accuracy of the potential efficiency gains listed. HI agreed that the presented technology options are applicable to the types of pumps being discussed, but it emphasized that DOE's estimates of potential efficiency gains are representative of the differences between the very worst and very best in class pump designs. HI also stated that the estimated efficiency gains listed by DOE in the Framework document are likely to be larger than the gains that would be realized for pumps that would be subject to an efficiency standard. (HI, Framework Public Meeting Transcript at pp. 297–298; HI, No. 25 at p. 9; HI, No. 25 at p. 39.)

Grundfos also commented on the applicability of the technology options. They suggested that certain design options are interrelated, noting that optimizing components such as the impeller (*i.e.,* the primary rotating component of a centrifugal pump) and volute (*i.e.,* the primary static component of a centrifugal pump) can reduce volumetric losses and improve efficiency. (Grundfos, No. 24 at p. 25.) Grundfos suggested that using combinations of options, such as hydraulic redesign, reduced running clearance, and reduced volumetric losses, may all be incorporated into the design of the pump to optimize the desired characteristics. (*Id.*)

DOE has incorporated both of these suggestions into its market and technology, screening, and engineering analyses.

b. Additional Technology Options

The CA IOUs recommended that DOE evaluate technology options that facilitate maintenance or improve average performance over a pump's lifetime. These include wear rings, flange taps, and compression sleeves. (CA IOUs, No. 26 at pp. 3, 4.) DOE evaluated all available technology options related to pump performance and efficiency, as defined by the proposed PEI metric and test procedure. While the technology options proposed by the CA IOUs may improve maintainability and average performance over a pump's lifetime, they were not found to have a significant impact on pump efficiency (as defined by the test procedure) as stand-alone technology options and, thus, were not considered in the analysis.

c. Applicability of Technology Options to Reduced Diameter Impellers

In the Framework Document, DOE also solicited comments on how the technology options might impact pumps with reduced diameter impellers. In response, HI observed that pursuing efficiency improvements specific to only trimmed impellers would prove costly and result in only minor efficiency gains. (HI, No. 25 at p. 39.) Grundfos noted that modifications in the pump design to achieve improved

[23] Note that this NOPR and the European Union regulation use different metrics to represent efficiency. DOE used available data to establish harmonized baseline and max-tech efficiency levels using the DOE metric.

[24] Council of the European Union. 2012. Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps. Official Journal of the European Union. L 165, 26 June 2012, pp. 28–36.

performance are not specific to the impeller trim, but to the design of all components as a whole. (Grundfos, No. 24 at p. 26.)

DOE is proposing to set energy conservation standards for pump efficiency based on the pump's full impeller diameter characteristics, which would require testing the pump at its full impeller diameter. As such, DOE's analyses of technology options have been made with respect to the full diameter model. In proposing to set standards only on the full diameter, DOE considered that improvements made to the full diameter pumps will also improve the efficiency for all trimmed or reduced diameter variants.

d. Elimination of Technology Options Due to Low Energy Savings Potential.

DOE eliminated some technologies that were determined to provide little or no potential for efficiency improvement for one of the following additional reasons: (a) The technology does not significantly improve efficiency; (b) the technology is not applicable to the equipment being considered for coverage or does not significantly improve efficiency across the entire scope of each equipment class; and (c) efficiency improvements from the technology degrade quickly.

DOE found that most of the technology options identified in the Framework Document have limited potential to improve the efficiency of pumps. In addition, DOE found that several of the options also do not pass the screening criteria listed in section III.B. DOE discusses the elimination of all of these technologies in section III.B.

B. Screening Analysis

DOE generally uses four screening factors to determine which technology options are suitable for further consideration in a standards rulemaking. If a technology option fails to meet any one of the factors, it is removed from consideration. The factors for screening design options include:

(1) Technological feasibility. Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.

(2) Practicability to manufacture, install and service. If mass production of a technology in commercial products and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install and service.

(3) Adverse impacts on product utility or product availability.

(4) Adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, sections (4)(a)(4) and (5)(b).

1. Screened Out Technologies

Improved Surface Finish on Wetted Components

Grundfos suggested that smoothing the surface finish of pump components is a time consuming manual activity that should not be considered to be a practical manufacturing process. (Grundfos, No. 24 at pp. 25–26.) Additionally, HI responded to DOE's initial estimates of available efficiency improvement by noting that its experience has shown that smoothing and surface finish have very little effect at higher specific speeds and for the range of pumps that are commonly in service. (HI, No. 25 at p. 39.) HI, Grundfos, and ACEEE all suggested that gains in efficiency from improved surface finish and smoothing are non-persistent, with the surface finish quickly being degraded in most applications. (HI, No.25 at pp. 9, 39; Grundfos, No. 24 at p. 25; ACEEE, Framework Public Meeting Transcript at p. 299.) Based on these comments, the agreement of the CIP Working Group (EERE–2013–BT–NOC–0039–0109 at pp. 91–97 pp. 46–50), and the information obtained from manufacturer interviews, DOE observed that, at this time, manual smoothing poses a number of significant drawbacks—(1) the process is manually-intensive, which makes it impractical to implement in a production environment, (2) the efficiency improvements from this process degrade over a short period of time, and (3) the relative magnitude of efficiency improvements are small (*e.g.,* approximately 20:1 for a baseline pump with a specific speed of 2,500 RPMs) when compared to other options, such as hydraulic redesign. Consequently, after considering these limitations and the relative benefits that might be possible from including this particular option, DOE concluded that manual smoothing operations would not be likely to significantly improve the energy efficiency across the entire scope of each equipment class DOE is currently examining. Consequently, DOE screened this technology option out. Chapters 3 and 4 of NOPR TSD provide further details on the justification for screening out this technology.

In addition to smoothing operations, DOE also evaluated two additional methods for improving surface finish; (1) surface coating or plating, and (2) improved casting techniques. In addition to being unable to significantly improve efficiency across the entire scope of each equipment class, surface coatings and platings were also screened out due to reliability and durability concerns, and improved casting techniques were screened out because the efficiency improvements from the technology degrade quickly. Chapters 3 and 4 of NOPR TSD provide further details on these methods for surface finish improvement, and justification for screening out.

Reduced Running Clearances

Grundfos stated that reducing running clearances is a method used by most manufacturers in the design of the individual components with the use of wear rings. (Grundfos, No. 24 at p.25.) HI suggested that the reduction in running clearances may improve efficiency in some applications, depending on specific speed, but it noted that reduced running clearances may also lead to mechanical reliability problems leading to the added expense of larger (stiffer) shafts, larger bearings, and advanced or more costly wear ring materials. (HI, No. 25 at p. 39.) HI and ACEEE also suggest that the efficiency improvements from tightened running clearances degrade quickly. (HI, Framework Public Meeting Transcript at p. 329; ACEEE, Framework Public Meeting Transcript at p. 299.)

Manufacturer interview responses indicate that clearances are currently set as tight as possible, given the limitations of current wear ring materials, machining tolerances, and pump assembly practices. To tighten clearance any further without causing operational contact between rotating and static components would require larger (stiffer) shafts, and larger (stiffer) bearings. Without these stiffer components, operational contact will lead to accelerated pump wear and loosened clearances. Loosened clearances cause the initial efficiency improvements to quickly degrade. Alternatively, the use of larger components to improve the stiffness to appropriate levels results in increased mechanical losses. These losses negate the potential improvements gained from reduced clearances. Consequently, DOE proposes to eliminate this technology option because of the reliability concerns highlighted by HI and the concerns of quickly degrading efficiency improvements highlighted by HI and ACEEE. For additional details on the screening of reduced running clearances, see chapter 4 of the NOPR TSD.

Reduced Mechanical Friction in Seals

DOE evaluated mechanical seal technologies that offered reduced friction when compared to commonly used alternatives. DOE concluded from this evaluation that the reduction in friction resulting from improved mechanical seals would be too small to significantly improve efficiency across the entire scope of each equipment class. For additional details, see chapters 3 and 4 of the NOPR TSD.

Reduction of Other Volumetric Losses

The most common causes of volumetric losses (other than previously discussed technology options) are thrust balance holes. (Thrust balance holes are holes located in the face of an impeller that act to balance the axial loads on the impeller shaft and thus reduce wear on rub surfaces and bearings). DOE found that removal of thrust balance holes from existing impellers will reduce pump reliability. DOE notes that manufacturers may be able to decrease volumetric losses by reducing the number and/or diameter of thrust balance holes as a part of a full hydraulic redesign. For additional details, see chapters 3 and 4 of the NOPR TSD.

Addition of a Variable Speed Drive (VSD)

Grundfos suggested that variable speed drives are a proven method to optimize pump operation and reduce energy consumption. (Grundfos, No. 24 at p. 25.) DOE agrees that variable speed drives are a proven method to optimize pump operation, but only for certain pump applications for which standards are being considered. DOE's analysis has shown that there are many applications for these types of pumps that will not benefit from a VSD. For common applications, such as systems that have unvarying flow and head requirements (constant load), on/off operation, or high percentages of static head,[25] VFDs may not save energy and may even increase energy consumption when factoring in the efficiency of the VFD unit. EEI reported that technologies that reduce power factor below 85 percent should be screened out because of deleterious impacts on the electric grid but that most VSDs will not reduce power factors to levels that would create extra costs for consumers. (EEI, No. 31 at p. 4.)

[25] Static head is the component of total dynamic head that results from the fluid being lifted a certain height above the pump. Unlike dynamic head, static head requirements stay constant across the system curve, even at zero flow.

Because there are many application types and load profiles that would not benefit from a VSD, and many applications for which energy use would increase with a VSD, DOE has eliminated the use of VSDs from the list of technology options. For additional details, see chapters 3 and 4 of the NOPR TSD.

Improvement of VSD Efficiency

Grundfos stated that proper selection, operation and integration of a VSD with a pump and motor are more important than improving the efficiency of the VSD alone. (Grundfos, No. 24 at p. 25.) Because DOE has eliminated the use of VSDs as a technology option, improvement of VSD efficiency will also not be considered as technology option. For additional details, see chapters 3 and 4 of the NOPR TSD.

Reduced VSD Standby and Off Mode Power Usage

Grundfos stated that reducing VSD standby and off mode power usage has a minor impact on energy efficiency, but can add to the efficiency of the control strategy. (Grundfos, No. 24 at p. 25.) Available information supports Grundfos' characterization of the relative benefits of improved VSD efficiency and reduced standby and off mode power usage. Although improving VSD efficiency and standby/off mode power may help improve overall pump efficiency, DOE has concluded that not all pumps for which DOE is considering standards in this rule would benefit from the use of a VSD. In addition, VSD standby and off model power usage would not impact the PEI rating of equipment as tested under the DOE test procedure. As such, DOE is not considering improved VSD efficiency and reduced standby and off mode power usage as design options in the engineering analysis. For additional details, see chapter 4 of the NOPR TSD.

2. Remaining Technologies

DOE found that only improved hydraulic design met all four screening criteria to be examined further in DOE's analysis. HI commented that hydraulic redesign will be the most prominent method used to improve efficiency because many of the easy to implement efficiency gains, such as tighter clearances, have already been explored by manufacturers. (HI, Framework Public Meeting Transcript at p. 328.) The results of DOE's screening analysis support HI's comment.

Improved hydraulic design is technologically feasible, as there is equipment on the market that has utilized this technology option. DOE also finds that improved hydraulic design meets the other screening criteria (*i.e.,* practicable to manufacture, install, and service and no adverse impacts on consumer utility, product availability, health, or safety). As such, DOE considered hydraulic redesign as a design option in the engineering analysis. For additional details, see chapter 4 of the NOPR TSD.

C. Engineering Analysis

The engineering analysis determines the manufacturing costs of achieving increased efficiency or decreased energy consumption. DOE historically has used the following three methodologies to generate the manufacturing costs needed for its engineering analyses: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed data as to costs for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

DOE conducted the engineering analyses for this rulemaking using a design-option approach. The decision to use this approach was made due to several factors, including the wide variety of equipment analyzed, the lack of numerous levels of equipment efficiency currently available in the market, and the limited design options available for the equipment. More specifically, for the hydraulic redesign option, DOE used industry research to determine changes in manufacturing costs and energy efficiency. DOE directly analyzed costs for the equipment classes listed in section IV.A.2. Consistent with HI's recommendation (HI, Framework Public Meeting Transcript at p. 329) and available data, DOE concluded that it was infeasible to determine the upfront costs (engineering time, tooling, new patterns, qualification, etc.) associated with hydraulic redesign via reverse engineering.

The following sections briefly discuss the methodology used in the engineering analysis. Complete details of the engineering analysis are available in chapter 5 of the NOPR TSD.

1. Representative Equipment for Analysis

a. Representative Configuration Selection

For the engineering analysis, DOE directly analyzed the cost-efficiency relationship for all equipment classes specified in in section IV.A.1, over the full range of sizes, for all pumps falling within the proposed scope. Within the engineering analysis, ''size'' is defined by a pump's flow at BEP and specific speed. Analyzing over the full size range allowed DOE to use representative configurations for each equipment class, rather than an approach that analyzes a representative unit from each class. A representative unit has a defined size and defined features, while a representative configuration defines only the features of the pump, allowing the cost-efficiency analysis to consider a large range of data points that occur over the full range of sizes. This method addresses the concerns of both EEI and HI that the equipment classes considered by DOE encompass too much variation to effectively be characterized by one representative unit. (EEI, Framework Public Meeting Transcript at pp. 275–276; HI, Framework Public Meeting Transcript at p. 286.)

In selecting representative configurations, DOE researched the offerings of major manufacturers to select configurations generally representative of the typical offerings produced within each equipment class. Configurations and features were based on high-shipment-volume designs prevalent in the market. The key features that define each representative configuration include impeller material, impeller production method, volute/casing material, volute/casing production method, and seal type.

For the ESCC, ESFM, and IL equipment classes, the representative configuration was defined as a pump fitted with a cast bronze impeller; cast-iron volute; and mechanical seal. For the RSV and VTS equipment classes, the representative configuration was defined as a pump fitted with sheet metal-based fabricated stainless-steel impeller(s), and sheet metal-based fabricated stainless-steel casing and internal static components. Chapter 5 of the TSD provides further detail on representative configurations.

b. Baseline Configuration

The baseline configuration defines the lowest efficiency equipment in each analyzed equipment class. This configuration represents equipment that utilizes the lowest efficiency technologies present in the market. Because DOE directly analyzed the cost-efficiency relationship over the full range of sizes, DOE defined a baseline configuration applicable across all sizes, rather than a more specific baseline model. This baseline configuration ultimately defines the energy consumption and associated cost for the lowest efficiency equipment analyzed in each class.

DOE established baseline configurations by reviewing available manufacturer performance and sales data for equipment manufactured at the time of the analysis. Chapter 5 of the NOPR TSD sets forth the process that DOE used to select the baseline configuration for each equipment class and discusses the baseline in greater detail.

2. Design Options

After conducting the screening analysis and removing from consideration technologies that did not warrant inclusion on technical grounds, DOE considered hydraulic redesign as a design option in the NOPR engineering analysis.

3. Available Energy Efficiency Improvements

For each equipment class, DOE assessed the available energy efficiency improvements resulting from a hydraulic redesign. This assessment was informed by manufacturer performance and cost data, confidential manufacturer interview responses, general industry research, and stakeholder input gathered at the CIP Working Group public meetings. DOE concluded that a hydraulic redesign is capable of improving the efficiency of a pump up to and including the max-tech level (discussed in section IV.C.4.a). The efficiency gains that a manufacturer realizes from a hydraulic redesign are expected to be commensurate with the level of effort and capital a manufacturer invests in redesign. Section IV.C.7 discusses the relationship between efficiency gains and conversion cost in more detail.

4. Efficiency Levels Analyzed

In assessing the cost associated with hydraulic redesign, and carrying through to all downstream analyses, DOE analyzed several efficiency levels. Each level consists of a specific C-value, as shown in Table IV.1. (See section III.D.1 for more information about C-values and the related equations.)

TABLE IV.1—EFFICIENCY LEVELS ANALYZED WITH CORRESPONDING C-VALUES

Equipment class	EL0	EL1	EL 2	EL 3	EL 4	EL 5
	Baseline	10th Efficiency percentile	25th Efficiency percentile	40th Efficiency percentile	55th Efficiency percentile	70th Efficiency percentile/max tech
ESCC.1800	134.43	131.63	128.47	126.67	125.07	123.71
ESCC.3600	135.94	134.60	130.42	128.92	127.35	125.29
ESFM.1800	134.99	132.95	128.85	127.04	125.12	123.71
ESFM.3600	136.59	134.98	130.99	129.26	127.77	126.07
IL.1800	135.92	133.95	129.30	127.30	126.00	124.45
IL.3600	141.01	138.86	133.84	131.04	129.38	127.35
RSV.1800*	129.63	N/A	N/A	N/A	N/A	124.73
RSV.3600*	133.20	N/A	N/A	N/A	N/A	129.10
VTS.1800	137.62	135.93	134.13	130.83	128.92	127.29
VTS.3600	137.62	135.93	134.13	130.83	128.92	127.29

*For RSV equipment, DOE established only baseline and max-tech efficiency levels due to limited data availability.

a. Maximum Technologically Feasible Levels

Efficiency level five (EL5), as shown in Table IV.1, represents the maximum technologically feasible (''max-tech'') efficiency level for the ESCC, ESFM, IL, and VTS equipment classes. EL1 represents max-tech for the RSV equipment classes. To set the max-tech level for the applicable equipment classes, DOE performed an analysis to determine the maximum improvement in energy efficiency that is technologically feasible for each equipment class.

DOE considers technologies to be technologically feasible if they are incorporated in any currently available equipment or working prototypes. A max-tech level results from the combination of design options predicted to result in the highest efficiency level possible for an equipment class.

In the case of pumps, DOE determined, based on available information and consistent with the conclusions of the CIP Working Group, that pumps are a mature technology, with all available design options already existing in the marketplace.[26] Therefore, DOE assumed in its analysis that the max-tech efficiency level coincides with the maximum available efficiency already offered in the marketplace. As a result, DOE performed a market-based analysis to determine max-tech/max-available levels. The analysis resulted in the 70th efficiency percentile being consider max-tech for each equipment class. A preliminary version of this analysis was provided to the CIP Working Group during the April 29–30, 2014 meetings. (EERE–2013–BT–NOC–0039–0051, pp. 17–32) This analysis proposed the 70th efficiency percentile as the max-tech level and solicited feedback on alternative opinions. Ultimately no alternative feedback on max-tech was received, and the CIP Working Group implicitly agreed with DOE's proposal, and incorporated the 70th efficiency percentile as the highest TSL level evaluated. Chapter 5 of NOPR TSD provides complete details on DOE's market-based max-tech analysis and results.

DOE's market-based approach directly addresses Grundfos' concerns (in response to the Framework Document) that it is difficult to accurately predict maximum efficiency levels using theoretical models. (Grundfos, No. 24 at p. 28).

In response to the CA IOUs concerns that manufacturers might not be currently making the most efficient pumps possible in all segments of the market. See CA IOUs, Framework Public Meeting Transcript at p. 331, DOE notes that the maximum available efficiency level was determined using a regression analysis across pumps of all sizes within each equipment class. As such, a broadly applicable max-tech/max-available level was developed, which does not provide any advantage or disadvantage to current low efficiency sub-segments of the market.

5. Manufacturers Production Cost Assessment Methodology

a. Changes in MPC Associated With Hydraulic Redesign

DOE performed an analysis for each equipment class to determine the change in manufacturer production cost (MPC), if any, associated with a hydraulic redesign. For this analysis, DOE reviewed the manufacturer selling price (MSP), component cost, performance, and efficiency data supplied by both individual manufacturers and HI. DOE, with the support of the majority of the CIP Working Group, concluded that for all equipment classes, a hydraulic redesign is not expected to increase the MPC of the representative pump configuration used for analysis.[27] Specifically, a hydraulic redesign is not expected to increase production or purchase cost of a pump's two primary components; the impeller and the volute.

DOE acknowledges that actual changes in MPC experienced by individual manufacturers will vary, and that in some cases redesigns may actually increase or decrease the cost of the impeller and/or volute. However, available information indicates that the flat MPC-versus-efficiency relationship best represents the aggregated pump industry as a whole. Chapter 5 of the NOPR TSD provides complete details on DOE's MPC-efficiency analysis and results.

b. Manufacturer Production Cost (MPC) Model

For each equipment class, DOE developed a scalable cost model to estimate MPC across all pump sizes. Given a pump's specific speed and BEP flow, the cost model outputs an estimated MPC. Because hydraulic redesign is not expected to result in an increase in MPC, the model is efficiency-independent and predicts the same MPC for all pumps of the identical BEP flow, specific speed, and equipment class, regardless of efficiency.

The DOE MPC model was developed using data supplied by both HI and individual manufacturers. This data set includes information on the MSP, manufacturer markup, shipments volumes, model performance and efficiency, and various other parameters. Chapter 5 of the NOPR TSD provides additional detail on the development of the MPC model.

6. Product and Capital Conversion Costs

DOE expects that hydraulic redesigns will result in significant conversion costs for manufacturers as they attempt to bring their pumps into compliance with the proposed standard. DOE classified these conversion costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with a new or amended energy conservation standard. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new product designs can be fabricated and assembled.

To evaluate the magnitude of the product and capital conversion costs the pump industry would incur to comply with new energy conservation standards, DOE used a bottom-up approach. For this approach, DOE first determined the industry-average cost, per model, to redesign pumps of varying sizes to meet each of the proposed efficiency levels. DOE then modeled the distribution of unique pump models that would require redesign at each efficiency level. For each efficiency level, DOE multiplied each unique failing model by its associated cost to redesign and summed the total to reach an estimate of the total product and capital conversion cost for the industry.

Data supplied to DOE by HI was used as the basis for the industry-average cost, per model, to redesign a failing pump model. HI, through an independent third party, surveyed 15 manufacturers regarding the product and conversion costs associated with redesigning one-, 50-, and 200-hp pumps from the 10th to the 40th percentile of market efficiency. Specifically, HI's survey contained cost categories for the following: Redesign; prototype and initial test; patterns and tooling; testing; working capital; and marketing.

[26] See EERE–2013–BT–NOC–0039–0072, pp.103–105.

[27] Refer to the following transcripts in which the conclusion of no change in MPC with improved efficiency is presented to the working group and discussed: EERE–2013–BT–NOC–0039–0072, pp. 114–130 and pp. 270–273; EERE–2013–BT–NOC–0039–0109, p.264).

DOE validated the HI survey data with independent analysis and comparable independently collected manufacturer interview data. In addition, data from the EU pumps regulation preparatory study [28] was used to augment the HI survey data and scale costs to various efficiency levels above and below the 40th percentile.

During the framework meeting, CA IOUs recommended that DOE use mature market estimates to determine costs associated with efficiency improvements rather than an approach based on the current market. (CA IOUs, Framework Public Meeting Transcript, No. 19, at pp. 324, 345.) In previous rules, the CA IOUs commented that the cost to improve efficiency has been overestimated. DOE recognizes the concerns of the CA IOUs and notes that hydraulic redesigns are a mature technology option and as such, the redesign costs used in the NOPR analysis represent the mature market cost of the technology option.

DOE used a pump model database, developed by its contractors, containing various performance parameters, to model the distribution of unique pump models that would require redesign at each efficiency level. The DOE contractor database is comprised of a combination of data supplied by HI and data collected independently from manufacturers by the DOE. For the ESCC, ESFM, IL, and VT equipment classes, the database is of suitable size to be representative of the industry as a whole. Table IV.2 presents the resulting product and capital conversion costs for each equipment class, at each efficiency level. Complete details on the calculation of industry aggregate product and capital conversion costs are found in chapter 5 of the NOPR TSD.

TABLE IV.2—TOTAL CONVERSION COST AT EACH EFFICIENCY LEVEL

All values in millions of dollars	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
ESCC/ESFM *	$0	$12.4	$49.4	$110.6	$210.4	$344.7.
IL	0	5.1	20.0	45.3	88.2	144.0.
VTS	0	2.5	9.3	19.2	37.8	61.3.
RSV	0	N/A	N/A	N/A	N/A	Data Not Available.

* Due to commonality in design and components, DOE calculated the conversion costs for ESCC and ESFM in aggregate. These values were later disaggregated, as appropriate, in downstream analyses.

7. Manufacturer Markup Analysis

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the full MPC. The resulting MSP is the price at which the manufacturer can recover all production and non-production costs and earn a profit. To meet the new energy conservation standards proposed in this rule, DOE expects that manufacturers will hydraulically redesign their product lines, which may result in new and increased capital and equipment conversion costs. Depending on the competitive environment for this equipment, some or all of the increased conversion costs may be passed from manufacturers to retailers and eventually to consumers in the form of higher purchase prices. The MSP should be high enough to recover the full cost of the equipment (*i.e.,* full production and non-production costs) and overhead (including amortized product and capital conversion costs), and still yield a profit. The manufacturer markup has an important bearing on profitability. A high markup under a standards scenario suggests manufacturers can readily pass along more of the increased capital and equipment conversion costs to consumers. A low markup suggests that manufacturers will not be able to recover as much of the necessary investment in plant and equipment.

DOE developed initial estimates of the base case manufacturer markups based on corporate annual reports, Securities and Exchange Commission (SEC) 10–K filings, confidential manufacturer data, and comments made publicly during the CIP Working Group negotiations.

To support the downstream analyses, DOE investigated industry markups in detail, characterizing industry-average markups, individual manufacturer markup structures, and the industry-wide markup structure.

a. Industry-Average Markups

Industry-average manufacturer markups were developed by weighting individual manufacturer markup estimates on a market share basis, as manufacturers with larger market shares more significantly affect the market average.

b. Individual Manufacturer Markup Structures

Using data and information gathered during the manufacturer interviews, DOE concluded that within an equipment class, each manufacturer maintains a flat markup. This means that each manufacturer targets a single markup value for models offered in an equipment class, regardless of size, efficiency, or other design features. Tiered product offerings and markups do not exist at the individual manufacturer level.

c. Industry-Wide Markup Structure

DOE also used the markup data gathered during the manufacturer interviews to assess the industry-wide markup structure. Although tiered product offerings and markups do not exist at the individual manufacturer level, DOE concluded that when analyzed as whole, the industry exhibits a relationship between manufacturer markup and efficiency. DOE's analysis showed that on the industry-wide scale, the lowest efficiency models tend to garner lower markups than higher efficiency models, up to about the 25th percentile of efficiency. Beyond the 25th percentile, the relationship flattens out, and no correlation is seen between markup and efficiency. The data suggest that this relationship is a result of certain manufacturers positioning themselves with more or less efficient product portfolios and charging markups commensurate with their position in the marketplace. They also indicate (consistent with the views of the CIP Working Group) that the market does not value efficiency beyond the lower 25th percentile. (EERE–2013–BT–NOC–0039–0072, pp. 269–278; EERE–2013–BT–NOC–0039–0054, pp. 67–69.) In both private interviews and public working group comments, manufacturers held the view that efficiency is not currently the primary selling point or cost driver for the

[28] AEA Energy & Environment. 2008, Appendix 6: Lot 11—'Circulators in buildings,' Report to European Commission.

majority of pumps within the scope of the proposed rule. Rather, other factors, such as reliability, may influence price significantly and are known to be more influential in the purchaser's decision making process. (EERE–2013–BT–NOC–0039–0072, pp. 269–278.)

DOE notes that the development of the markup-efficiency relationship was based on data from the IL equipment class. DOE, with support of the CIP Working Group, concludes that the markup structure of the IL equipment class is representative of the ESCC, ESFM, and VTS equipment classes.[29] DOE applied the IL markup-efficiency relationship to these equipment classes, for use in the analyses presented in this NOPR. Chapter 5 of the NOPR TSD provides complete details the markup-efficiency relationship analysis and results.

8. MSP-Efficiency Relationship

Ultimately, the goal of the engineering analysis is to develop an MSP-Efficiency relationship that can be used in downstream rulemaking analyses such as the Life Cycle Cost (LCC) analysis, the Payback Period (PBP) analysis, and the Manufacturer Impact Analysis (MIA).

For the downstream analyses, DOE evaluated the base case MSP-Efficiency relationship as well as two separate MSP-Efficiency relationship scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new energy conservation standards. The two scenarios are: (1) Flat pricing, and (2) cost recovery pricing. These scenarios result in varying revenue and cash flow impacts and were chosen to represent the lower and upper bounds of potential revenues for manufacturers.

The base pricing scenario represents a snapshot of the pump market, as it stands prior to this rulemaking. The base pricing scenario was developed by applying the markup-efficiency relationship presented in section IV.C.7.c to the MPC model presented in section IV.C.5.a. Both the markup and MPC model are based on data supplied by individual manufacturers. From these data, DOE created a scalable model that can determine MSP as a function of efficiency, specific speed, and flow at BEP.

Under the flat pricing standards case scenario, DOE maintains the same pricing as in the base case, which resulted in no price changes at a given efficiency level for the manufacturer's first consumer. Because this pricing scenario assumes that manufacturers would not increase their pricing as a result of standards, even as they incur conversion costs, this scenario is considered a lower bound for revenues.

In the cost recovery pricing scenario, manufacturer pricing is set so that manufacturers recover their conversion costs over the analysis period. This cost recovery is enabled by an increase in mark-up, which results in higher sales prices for pumps even as MPCs stay the same. The cost recovery calculation assumes manufacturers raise prices on models where a redesign is necessitated by the standard. The additional revenue due to the increase in markup results in manufacturers recovering 100 percent of their conversion costs over the 30-year analysis period, taking into account the time-value of money. The final MSP-efficiency relationship for this scenario is created by applying the markup-efficiency relationship to the MPC cost model presented in section IV.C.5.b., resulting in a scalable model that can determine MSP as a function of efficiency, specific speed, and flow at BEP. In the LCC and NIA analysis, DOE evaluated only the cost recovery pricing scenario, as it would be the most conservative case for consumers, resulting in the fewest benefits.[30]

D. Markups Analysis

DOE uses markups (*e.g.,* manufacturer markups, distributor markups, contractor markups) and sales taxes to convert the MSP estimates from the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. The markups are multipliers that represent increases above the MSP. DOE develops baseline and incremental markups based on the equipment markups at each step in the distribution chain. The incremental markup relates the change in the manufacturer sales price of higher-efficiency models (the incremental cost increase) to the change in the consumer price.

Before developing markups, DOE defines key market participants and identifies distribution channels. In the Framework Document, DOE presented initial information regarding the distribution channels for pumps. DOE revised these channels and their assigned market share in response to manufacturer interviews and discussions in the CIP Working Group. (See, *e.g.,* EERE–2013–BT–NOC–0039–0072, pp. 327–330.) Based on this information, DOE proposes to use the following main distribution channels that describe how pumps pass from the manufacturer to end-users: (1) Manufacturer to distributor to contractor to end-users (70 percent of sales); (2) manufacturer to distributor to end-users (17 percent of sales); (3) manufacturer to original equipment manufacturer to end-users (8 percent of sales); (4) manufacturer to end-users (2 percent of sales); and (5) manufacturer to contractor to end-users (1 percent of sales). Other distribution channels exist but are estimated to account for a minor share of pump sales (combined 2 percent).

To develop markups for the parties involved in the distribution of the equipment, DOE utilized several sources, including: (1) The U.S. Census Bureau 2007 *Economic Census Manufacturing Industry Series* (NAICS 33 Series) [31] to develop original equipment manufacturer markups; (2) the U.S. Census Bureau 2012 *Annual Wholesale Trade Survey, Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers* [32] to develop distributor markups; and (3) 2013 RS Means *Electrical Cost Data* [33] to develop mechanical contractor markups.

In addition to the markups, DOE derived State and local taxes from data provided by the Sales Tax Clearinghouse.[34] These data represent weighted-average taxes that include county and city rates. DOE derived shipment-weighted-average tax values for each region considered in the analysis.

In the Framework Document, DOE also considered accounting for shipping costs in its markups analysis. In response to the Framework Document,

[29] Refer to the following transcript in which the conclusion that the markup structure of the IL equipment class is representative of the ESCC, ESFM, and VTS equipment classes is presented to the working group and no negative feedback is received: EERE–2013–BT–NOC–0039–0072, pp. 292–295.

[30] The cost recovery pricing scenario is the most conservative case (*ie,*i.e., resulting in the fewest benefits) for consumers and the most positive case for manufacturers (ie,i.e., resulting in the fewest negative impacts). In the MIA, DOE analyses this scenario and the flat pricing scenario, which results in the most positive case for consumer and the most conservative case for manufacturers.

[31] U.S. Census Bureau (2007). *Economic Census Manufacturing Industry Series (NAICS 33 Series) http://www.census.gov/manufacturing/asm.*

[32] U.S. Census Bureau (2012). *Annual Wholesale Trade Survey, Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers (NAICS 4237). http://www.census.gov/wholesale/index.html.*

[33] RS Means (2013), Electrical Cost Data, 36th Annual Edition (Available at: *http://www.rsmeans.com*).

[34] Sales Tax Clearinghouse, Inc. (last accessed on January 10, 2014), *State sales tax rates along with combined average city and county rates, http://thestc.com/STrates.stm.*

Grundfos noted that transportation and shipping costs from freight companies and package delivery companies are based on size, weight and transit time requirements. (Grundfos, No. 24 at p. 31.) DOE's understanding is that pump size and weight do not change with efficiency level; therefore, DOE did not account for shipping costs in this analysis.

Chapter 6 of the NOPR TSD provides further detail on the estimation of markups.

Because the identified market channels are complex and their characterization required a number of assumptions, DOE seeks input on its analysis of market channels for the above equipment classes, particularly related to whether the channels include all necessary intermediate steps, and the estimated market share of each channel. DOE identified this as Issue 3 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

E. Energy Use Analysis

DOE analyzed the energy use of pumps to estimate the savings in energy costs that consumers would realize from more energy-efficient pump equipment. Annual energy use depends on a number of factors that depend on the utilization of the pump, particularly duty point (*i.e.,* flow, head, and power required for a given application), pump sizing, annual hours of operation, load profiles, and equipment losses. The annual energy use is calculated as a weighted sum of input power multiplied by the annual operating hours across all load points.

1. Duty Point

DOE researched information on duty points for the commercial, industrial, and agricultural sectors from a variety of sources. DOE identified statistical samples only for the agricultural sector. Therefore, DOE used manufacturer shipment data to estimate the distribution of pumps in use by duty point. To account for the wide range of pump duty points in the field, DOE placed pump models in bins with varying power capacities using the shipment data provided by individual manufacturers. DOE grouped all pump models into nine power bins on a log-scale between 1 and 200 hp. Then, for each equipment class, DOE grouped the pump models into nine flow bins on a log-scale between minimum flow at BEP and maximum flow at BEP. Based on the power and flow binning process, DOE defined a representative unit for each of the combined power and flow bins. Within each bin, DOE defined the pump performance data (power and flow at BEP, pump curve and efficiency curve) as the shipment-weighted averages over all units in the bin. DOE used these data to calculate the annual energy use for each of the equipment classes.

2. Pump Sizing

In the Framework Document, DOE requested information on pump sizing. Grundfos noted that the general selection guidelines and other resources are available from HI and specific professional or trade associations such as ASHRAE.[35] (Grundfos, No. 24 at p. 32.) DOE reviewed relevant guidelines and resources and introduced a variable called the BEP offset to capture variations in pump sizing practices in the field. The BEP offset is essentially the relative distance between the consumer's duty point and the pump's BEP. Pumps are often sized to operate within 75 percent to 110 percent of their BEP flow. Therefore, for this analysis, the BEP offset is assumed to be uniformly distributed between -0.25 (*i.e.,* 25% less than BEP flow) and 0.1 (10% more than BEP flow).

3. Operating Hours

DOE estimated average annual operating hours by application based on inputs from a market expert and feedback from the CIP Working Group.[36] DOE developed statistical distributions to use in its energy use analysis.

DOE requests information and data on average annual operating hours for the pump types and applications in the scope of this rulemaking. This is identified as Issue 4 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

4. Load Profiles

Information on typical load profiles for pumps is not available in the public domain. DOE requested information on load profiles in the Framework Document. Grundfos responded that available public data related to the use of pumps is very limited and provided a reference that may be considered for heating, cooling, and hot water load profiles: California's 2013 Title 24 Nonresidential Alternative Calculation Method (ACM) Reference Manual, Appendix 5.4B. (Grundfos, No. 24 at p. 32.) Grundfos also noted that general selection guidelines and other resources are available from HI and suggested that DOE review EU Commission Regulation No 547/2012 and the work being considered under the Ecodesign Preparatory Study (ENER Lot 29). (Grundfos, No. 24 at p. 34.) HI mentioned that application-specific duty profiles could lead to confusion for pumps with motors and/or controls serving multiple applications and suggested that a single duty profile, consisting of equally weighted time intervals at 100 percent, 75 percent, 50 percent, and 25 percent of the BEP flow, be used to evaluate pump efficiency. (HI, No. 25 at p. 43.)

DOE reviewed the resources suggested by Grundfos, as well as other information on pump load profiles, such as building simulation files. DOE concluded, however, that these load profiles were not sufficiently representative of the variability expected in the field for commercial applications. In addition, DOE did not identify any similar information for other sectors, including the industrial, agricultural, and municipal sectors. However, DOE believed it would be appropriate to analyze more than one duty profile. Considering the range of all applications of the pump equipment classes for which DOE is considering standards, DOE developed four load profiles, characterized by different weights at 50 percent, 75 percent, 100 percent, and 110 percent of the flow at the duty point. These load profiles represent different types of loading conditions in the field: Flat load at BEP, flat/over-sized load weighted evenly at 50 percent and 75 percent BEP, variable load over-sized, and variable load under-sized. During the CIP Working Group negotiations, DOE initially proposed that each of these load profiles would be weighted equally in the consumer sample. However, a stakeholder commented that pumps generally operated on the pump curve to the left of the BEP (*i.e.,* pumps generally require less flow than that provided at BEP) as opposed to beyond the BEP. (Charles Cappellino, ITT, EERE–2013–BT–NOC–0039–0072, p. 356.) This indicates that pumps are generally oversized rather than undersized. Therefore, DOE estimated that only 10 percent of consumers would use pumps with the variable load/undersized load profile; the remaining load profiles were estimated to apply to 30 percent of consumers each. DOE notes that changes in weighting across the load profiles have very little impact on energy use results.

DOE requests information and data on typical load profiles for the pump types and applications in the scope of this

[35] ASHRAE was formerly known as the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

[36] Refer to the following transcripts in which operating hours are presented to the working group and no negative feedback is received: EERE–2013–BT–NOC–0039–0072, pp. 353–355; EERE–2013–BT–NOC–0039–XXXX0109, pp. 128–140139–152.

rulemaking. This is identified as Issue 5 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

To describe a pump's power requirements at points on the load profile away from the BEP, DOE used the shipment-weighted average pump curves, modeled as second-order polynomial functions, for each of the representative units.

5. Equipment Losses

Using the duty point, load profile, and operational hours, DOE calculated the energy use required for the end-use (or the energy which that is converted to useful hydraulic horsepower). However, the total energy use by pumps also depends on pump losses, motor losses, and control losses.

Pump losses account for the differences between pump shaft horsepower and hydraulic horsepower due to friction and other factors. DOE takes this into account using the efficiency information available in the manufacturer shipment data for each pump. To describe pump efficiency at points away from the BEP, DOE calculated shipment-weighted average efficiency curves for each representative unit, modeled as second-order polynomial functions.

In the Framework Document, DOE requested information on motor losses Grundfos noted that existing motor efficiency standards based on prior requirements set by the Energy Policy Act of 1992 (Pub. L. 102–486, Oct. 24 1992) and the Energy Independence and Security Act of 2007 (Pub. L. 110–140, Dec. 19, 2007) can be utilized as minimum efficiency levels. (Grundfos, No. 24 at p. 34) DOE used existing minimum motor efficiency standards in calculating annual energy use.

In the Framework Document, DOE also requested information on variable frequency drive (VFD) efficiency. VFDs are the most common type of VSD used in the pump market; they automatically control the speed of a pump by adjusting frequency in response to system feedback. In this way, pumps can deliver the appropriate amount of flow required by the system with less head and power compared to reducing flow at full speed by closing a throttling valve. Grundfos noted that the efficiencies of a VFD vary by manufacturer and suggested that a sampling of these efficiencies can be obtained from the members of the Adjustable Speed Drive Systems group of the Industrial Automation section of the National Electrical Manufacturers Association (NEMA). (Grundfos, No. 24 at p. 34.) DOE has reviewed all available VFD efficiency information in developing the test procedure NOPR. However, DOE estimates that very few pump users operate their pumps with VFDs. (See section IV.H.1.a, the life-cycle cost analysis is not meant to represent national impacts, DOE's energy use analysis assumes that all users with variable loads throttled their pumps and therefore did not include VFD efficiency. This assumption allows for the analysis of impacts to the largest group of customers in the market (*i.e.,* those that throttle their pumps). However, DOE considered use of VFDs—in the life-cycle cost customer subgroup and national impact analyses. (See section IV.I and IV.H.1.a, respectively.)

As noted previously, DOE proposed in the test procedure NOPR that pumps sold with non-electric drivers be rated as bare pumps. Any hydraulic improvements made to the bare pump to comply with any applicable energy conservation standards would also result in energy savings if the pump is used with a non-electric driver. However, DOE estimated, based on information from consultants and the CIP Working Group, that only 1–2% of pumps in scope are driven by non-electric drivers. Therefore DOE accounted for the energy use of all pumps as electricity use and chose not to account for fuel use in its analysis.

DOE requests comment on the percent of pumps in scope operated by each fuel type other than electricity (*e.g.,* diesel, gasoline, liquid propane gas, or natural gas) and the efficiency or losses of each type of non-electric driver, including transmission losses if any, that would allow DOE to estimate the fuel use and savings of pumps sold with non-electric drivers. This is identified as Issue 6 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted the life-cycle cost (LCC) and payback period (PBP) analysis to estimate the economic impacts of potential standards on individual consumers of pump equipment. The LCC calculation considers total installed cost (equipment cost, sales taxes, distribution chain markups, and installation cost), operating expenses (energy, repair, and maintenance costs), equipment lifetime, and discount rate. DOE calculated the LCC for all consumers as if each would purchase a pump in the year the standard takes effect. DOE presumes that the purchase year for all pump equipment for purposes of the LCC calculation is 2020, the first full year following the expected compliance date of late 2019. To compute LCCs, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment.

DOE analyzed the effect of changes in installed costs and operating expenses by calculating the PBP of potential standards relative to baseline efficiency levels. The PBP estimates the amount of time it would take the consumer to recover the incremental increase in the purchase price of more-efficient equipment through lower operating costs. In other words, the PBP is the change in purchase price divided by the change in annual operating cost that results from the energy conservation standard. DOE expresses this period in years. Similar to the LCC, the PBP is based on the total installed cost and operating expenses. However, unlike the LCC, DOE only considers the first year's operating expenses in the PBP calculation. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple PBP.

DOE's LCC and PBP analyses are presented in the form of a spreadsheet model, available on DOE's Web site for pumps.[37] DOE accounts for variability in energy use and prices, discount rates by doing individual LCC calculations for a large sample of pumps (10,000 for each equipment class) that are assigned different installation conditions. Installation conditions include consumer attributes such as sector and application, and usage attributes such as duty point and annual hours of operation. Each pump installation in the sample is equally weighted. The simple average over the sample is used to generate national LCC savings by efficiency level. The results of DOE's LCC and PBP analysis are summarized in section V.B.1.a and described in detail in chapter 8 of the NOPR TSD.

1. Approach

DOE conducted the LCC analysis by developing a large sample of 10,000 pump installations, which represent the general population of pumps that would be affected by proposed energy conservation standards. Separate LCC analyses are conducted for each equipment class. Conceptually, the LCC distinguishes between the pump installation and the pump itself. The pump installation is characterized by a combination of consumer attributes (sector, application, electricity price, discount rate) and usage attributes (duty point, BEP offset, load profile, annual

[37] See *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/14.*

hours of operation, mechanical lifetime) that do not change among the considered efficiency levels. The pump itself is the regulated equipment, so its efficiency and selling price change in the analysis.

In the base case, which represents the market in the absence of new energy efficiency standards, DOE assigns a specific representative pump to each pump installation. These pumps are chosen from the set of representative units described in the energy use analysis. The relative weighting of different representative units in the LCC sample is determined based on 2012 shipments data supplied by the manufacturers.

The base case also includes an estimate of the distribution of equipment efficiencies. DOE developed a base-case distribution of efficiency levels for pumps using the shipments data mentioned above. DOE assumed that this distribution would remain constant over time and applied the 2012 distribution in 2020. Out of this distribution, DOE assigns a pump efficiency based on the relative weighting of different efficiencies. Chapter 8 of the NOPR TSD contains details regarding the base case efficiency distribution.

At each efficiency level, the pump assigned in the base case has a PEI rating that either would or would not meet a standard set at that efficiency level. If the pump would meet the standard at a given efficiency level, the installation is left unchanged. For that installation, the LCC at the given TSL is the same as the LCC in the base case and the standard does not impact that user. If the pump would not meet the standard at a given efficiency level, the base case pump is replaced with a compliant unit (*i.e.,* a redesigned pump) having a higher selling price and higher efficiency, and the LCC is recalculated. The LCC savings at that efficiency level are defined as the difference between the LCC in the base case and the LCC for the more efficient pump. The LCC is calculated for each pump installation at each efficiency level.

In the engineering analysis, DOE determines the total conversion costs required to bring the entire population of pump models up to a given efficiency level. DOE uses these conversion costs to calculate the selling price of a redesigned pump within each of the combined power and flow bins that define a representative unit. DOE assumes that all consumers whose base case pump would not meet the standard at a given efficiency level will purchase the new redesigned pump at the new selling price, and that manufacturers recover the total conversion costs at each efficiency level. DOE allocates conversion costs to each representative unit based on the proportion of total revenues generated by that unit in the base case.

DOE calculates the selling price in two stages. In the first stage, for each equipment class and efficiency level, DOE calculates the total revenue generated from all failing units, adds the total conversion costs to the revenues from failing units to generate the new revenue requirement, and defines a markup as the ratio of the new revenue requirement to the base case revenue from failing units. This approach ensures that (1) the conversion costs are recovered from the sale of redesigned units and (2) the conversion costs are distributed across the different representative units in proportion to the amount of revenue each representative unit generates in the base case.

In the second stage, DOE calculates a new selling price for each redesigned representative unit, *i.e.,* for each of the combined power and flow bins. In the base case, each bin contains a set of pumps with varying efficiencies and varying prices. However, all pumps that fail at an efficiency level are given the same new price. Hence, the markup defined in stage one of the calculation cannot be applied directly to the selling price of a failing unit. Instead, DOE calculates revenues associates with all failing units in the bin, and applies the markup to this total to get the new revenue requirement for that bin. Then DOE defines the new selling price as the new revenue requirement divided by the number of failing units in the bin.

In general, the economic inputs to the LCC, (*e.g.,* discount rate and electricity price) depend on the sector, while the usage criteria (*e.g.,* hours of operation) may depend on the application. For the pumps analysis, DOE considered four sectors: Industrial, commercial buildings, agricultural and municipal water utilities. DOE assigns electricity prices and discount rates based on the sector. DOE considered several applications, based on a review of available data, and determined that there is some correlation between application and operating hours. DOE did not find any information relating either the BEP offset (a pump sizing factor) or load profile to either sector or application, so DOE assigned these values randomly.

As noted above, DOE determines the distribution of representative units in the pump installation sample from the shipments data. Each representative unit can be thought of as a pump that operates at a representative duty point. To assign the consumer attributes (sector, application etc.) to duty points, DOE reviewed several data sources to incorporate correlations between sector, application, equipment class and the distribution of duty points into the analysis. Specifically, DOE used a database of various industrial applications collected from several case studies and field studies, and a database on pump tests provided by the Pacific Gas & Electric Company, to construct the distribution of pumps by sector, application and speed as a function of power bin and equipment class. DOE used these distributions to determine the relative weighting of different sectors and applications in the LCC sample for each equipment class.

2. Life-Cycle Cost Inputs

For each efficiency level DOE analyzed, the LCC analysis required input data for the total installed cost of the equipment, its operating cost, and the discount rate. Table IV.3 summarizes the inputs and key assumptions DOE used to calculate the consumer economic impacts of all energy efficiency levels analyzed in this rulemaking. A more detailed discussion of the inputs follows.

TABLE IV.3—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Inputs	Description
Affecting Installed Costs	
Equipment Price	Equipment price derived by multiplying manufacturer sales price or MSP (calculated in the engineering analysis) by distribution channel markups, as needed, plus sales tax from the markups analysis.

TABLE IV.3—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES—Continued

Inputs	Description
Installation Cost	Installation cost assumed to not change with efficiency level, and therefore is not included in this analysis.
Affecting Operating Costs	
Annual Energy Use	Annual unit energy consumption for each class of equipment at each efficiency level estimated by sector and application using simulation models.
Electricity Prices	DOE developed average electricity prices and projections of future electricity prices based on Annual Energy Outlook 2014 (AEO 2014).[38]
Maintenance Cost	Maintenance cost assumed to not change with efficiency level, and therefore is not included in this analysis.
Repair Cost	Repair cost assumed to not change with efficiency level, and therefore is not included in this analysis.
Affecting Present Value of Annual Operating Cost Savings	
Equipment Lifetime	Pump equipment lifetimes estimated to range between 4 and 40 years, with an average lifespan of 15 years across all equipment classes, based on estimates from market experts and input from the CIP Working Group.[39]
Discount Rate	Mean real discount rates for all sectors that purchase pumps range from 3.4 percent for municipal sector to 5.9 percent for industrial sector.
Analysis Start Year	Start year for LCC is 2020, which is the first full year following the estimated compliance date of late 2019.
Analyzed Efficiency Levels	
Analyzed Efficiency Levels	DOE analyzed the baseline efficiency levels and five higher efficiency levels for each equipment class. See the engineering analysis for additional details on selections of efficiency levels and cost.

DOE analyzed the baseline efficiency levels (reflecting the lowest efficiency levels currently on the market) and five higher efficiency levels for each equipment class analyzed. Chapter 5 of the NOPR TSDprovides additional details on the selection of efficiency levels and cost.

a. Equipment Prices

The price of pump equipment reflects the application of distribution channel markups and sales tax to the manufacturer sales price (MSP), which is the cost established in the engineering analysis. For each equipment class, DOE generated MSPs for the baseline equipment and five higher equipment efficiencies in the engineering analysis. As described in section IV.D, DOE determined distribution channel costs and markups for pump equipment.

The markup is the percentage increase in price as the pump equipment passes through distribution channels. As explained in section IV.D, DOE assumed that pumps are delivered by the manufacturer through one of five distribution channels. The overall markups used in LCC analyses are weighted averages of all of the relevant distribution channel markups.

To project an equipment price trend for the NOPR, DOE derived an inflation-adjusted index of the Producer Price Index for pumps and pumping equipment over the period 1984–2013.[40] These data show a general price index increase from 1987 through 2009. Since 2009, there has been no clear trend in the price index. Given the relatively slow global economic activity in 2009 through 2013, the extent to which the future trend can be predicted based on the last two decades is uncertain and the observed data do not provide a firm basis for projecting future cost trends for pump equipment. Therefore, DOE used a constant price assumption as the default trend to project future pump prices in 2020. Thus, prices projected for the LCC and PBP analysis are equal to the 2012 values for each efficiency level in each equipment class. Appendix 8A of the NOPR TSD describes the historical data that were considered.

DOE requests comments on the most appropriate trend to use for real (inflation-adjusted) pump prices. This is identified as Issue 7 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

b. Installation Costs

In the Framework Document, DOE requested information on whether installation costs would be expected to change with efficiency. Grundfos responded that this was not expected to occur for new installations, but noted that for existing installations, there may be additional costs to replace existing equipment with higher efficiency equipment for piping, electrical modifications, base and foundations, and code requirements for equipment rooms. (Grundfos, No. 24 at p. 34.) In the CIP Working Group, Grundfos and ITT Corporation also noted that the assumption of targeting identical flange or feet dimensions during redesign is reasonable, but that, as one drives to higher efficiency one may have to stretch the pump (*i.e.,* change the dimensions from the base design) and change configurations. (See EERE–2013–BT–NOC–0039–0109, pp.240–242), Grundfos stated that at some point within the range of efficiency levels under consideration, whether at PER 40 or 70 or some other point, the installation cost might change. In the absence of data to indicate at what efficiency level DOE may need to consider an increase in installation costs, DOE has not estimated installation costs for this analysis. DOE requests comment on whether any of the efficiency levels considered in this

[38] U.S. Energy Information Administration. *Annual Energy Outlook 2014* (2014) DOE/EIA–0383(2014). (Last Accessed August 8, 2014) (Available at: *http://www.eia.gov/forecasts/aeo/*).

[39] See for example, Docket No. EERE–2013–BT–NOC–0039–0073, p. 153.

[40] Series ID PCU333911333911; *http://www.bls.gov/ppi/*.

NOPR might lead to an increase in installation costs and, if so, data regarding the magnitude of the increased cost for each relevant efficiency level. This is identified as Issue 8 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

c. Annual Energy Use

DOE estimated the annual electricity consumed by each class of pump equipment, by efficiency level, based on the energy use analysis described in section IV.E and in chapter 7 of the NOPR TSD.

d. Electricity Prices

Electricity prices are used to convert changes in the electric consumption from higher-efficiency equipment into energy cost savings. DOE used average national commercial and industrial electricity prices from the *AEO 2014* reference case. DOE applied the commercial price to pump installations in the commercial sector and the industrial price to installations in the industrial, agricultural, and municipal sectors. To establish prices beyond 2040 (the last year in the *AEO 2014* projection, DOE extrapolated the trend in prices from 2030 to 2040 for both the commercial and industrial sectors.

In response to the Framework Document and during the CIP Working Group meetings, EEI and the CA IOUs discussed consideration of reactive power prices in the analyses. Specifically, the CA IOUs recommended that DOE consider costs and value of power factor and reactive power.[41] (CA IOUs, No. 26 at p. 4, EERE–2013–BT–NOC–0039–0072, p. 341.) On the other hand, EEI stated that it may not be necessary to consider reactive power prices because most pumps, motors, and VSDs will not reduce power factors to levels that would create extra costs for consumers. (EEI, No. 31 at p. 4.) DOE is not considering motors or VSDs as technology options and concludes that any changes in pump efficiency would have very small impacts on power factor. As a result, DOE did not include reactive power prices in its analyses.

e. Maintenance Costs

During the CIP Working Group meetings, DOE indicated that its analysis assumed that maintenance costs would not change with efficiency level. (EERE–2013–BT–NOC–0039–0073, p. 135.) DOE did not receive any negative comments on this assumption, so DOE has not estimated a maintenance cost for this analysis.

f. Repair Costs

DOE received information in response to the Framework Document (Grundfos, No. 24 at p. 35) and from the CIP Working Group that repair costs are not expected to change with efficiency level. Therefore, DOE has not estimated a repair cost for this analysis.

g. Equipment Lifetime

DOE defines ''equipment lifetime'' as the age when a given commercial or industrial pump is retired from service. DOE consulted with market experts to establish typical equipment lifetimes, which included estimates of minimum and maximum lifetime. Consequently, DOE developed distributions of lifetimes that vary by equipment class. The average across all equipment classes is 15 years. DOE also used a distribution of mechanical lifetime in hours to allow a negative correlation between annual operating hours and lifetime in years—pumps with more annual operating hours tend to have shorter lifetimes. In addition, based on discussions in the CIP Working Group meetings (see, *e.g.,* Docket No. EERE–2013–BT–NOC–0039–0073, p. 153), DOE introduced lifetime variation by pump speed—pumps running faster tend to have a shorter lifetime. Chapter 8 of the NOPR TSD contains a detailed discussion of equipment lifetimes.

h. Discount Rates

The discount rate is the rate at which future expenditures are discounted to estimate their present value. The cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing. For all but the municipal sector, DOE uses the capital asset pricing model to calculate the equity capital component, and financial data sources, primarily the Damodaran Online Web site,[42] to calculate the cost of debt financing. DOE derived the discount rates by estimating the cost of capital of companies that purchase pumping equipment.

For the municipal sector, DOE calculated the real average interest rate on state and local bonds over the period of 1983–2012 by adjusting the Federal Reserve Board nominal rates to account for inflation. This 30-year average is assumed to be representative of the cost of capital relevant to municipal end users over the analysis period.

More details regarding DOE's estimates of consumer discount rates are provided in chapter 8 of the NOPR TSD.

3. Payback Period

The PBP measures the amount of time it takes the commercial consumer to recover the assumed higher purchase expense of more-efficient equipment through lower operating costs. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses for each application and sector, weighted by the probability of shipments to each market. Because the simple PBP does not take into account changes in operating expense over time or the time value of money, DOE considered only the first year's operating expenses to calculate the PBP, unlike the LCC, which is calculated over the lifetime of the equipment. Chapter 8 of the NOPR TSD provides additional details about the PBP calculation.

4. Rebuttable-Presumption Payback Period

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii) and 42 U.S.C. 6316(a).) For each considered efficiency level, DOE determines the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy price forecast for the year in which compliance with the amended standards would be required.

G. Shipments Analysis

In its shipments analysis, DOE developed shipment projections for pumps and, in turn, calculated equipment stock over the course of the analysis period. DOE used the shipments projection and the equipment stock to determine the NES. The shipments portion of the spreadsheet model projects pump shipments from 2020 through 2049.

In the Framework Document, DOE considered using the shipment data available from the U.S. Census Bureau.

[41] Power factor is the ratio of real power flowing to the load to the apparent power in the circuit. Reactive power is power that is not transferred to the load but is required for electric motors to start.

[42] Damodaran financial data used for determining cost of capital are available at: *http://pages.stern.nyu.edu/~adamodar/* for commercial businesses (Last accessed February 12, 2014).

In response, Grundfos and HI expressed concern that the Census descriptions did not match HI nomenclature. (Grundfos, No. 24 at p. 20; HI, No. 25 at p. 36.) HI further added that they did not find the Census data to be reliable (Id.) During the course of the CIP Working Group meetings, HI provided DOE with shipment estimates collected directly from its members (EERE–2013–BT–NOC–0039–0068).

To develop the shipments model, DOE started with the 2012 shipment estimates by equipment type from HI. For the initial year, DOE distributed total shipments into the four sectors using estimates from the LCC, as discussed in section IV.F.1. To project shipments of pumps, DOE relied primarily on *AEO 2014* forecasts of various indicators for each sector: (1) Commercial floor space; (2) value of manufacturing shipments; (3) value of agriculture, mining, and construction shipments; and (4) population (for the municipal sector).

DOE used the 2012 total industry shipments by equipment class estimated by HI to distribute total shipments in each year into the five equipment types. DOE then used 2012 shipment data collected directly from manufacturers to distribute shipments into the further disaggregated equipment classes accounting for nominal speeds. The distribution of sectors changes over time as a result of each sector's differing forecast in AEO, while the distribution of equipment classes remains constant over time.

DOE estimated that standards would have a negligible impact on pump shipments. Under most pricing scenarios, it is likely that following a standard, a consumer would be able to buy a more efficient pump for the same price as the less efficient pump they would have purchased before or without a standard. Therefore, rather than foregoing a pump purchase under a standards case, a consumer might simply switch brands or pumps to purchase a cheaper one that did not have to be redesigned. As a result, DOE used the same shipments projections in the standards case as in the base case. Chapter 9 of the TSD contains more details. DOE seeks comment on whether new standards would be likely to affect shipments. This is identified as Issue 9 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

H. National Impact Analysis

The national impact analysis (NIA) evaluates the effects of energy conservation standards from a national perspective. This analysis assesses the net present value (NPV) (future amounts discounted to the present) and the national energy savings (NES) of total commercial consumer costs and savings expected to result from new standards at specific efficiency levels.

The NES refers to cumulative energy savings for the lifetime of pumps shipped from 2020 through 2049. DOE calculated energy savings in each year relative to a base case, defined by the current market. DOE calculated net monetary savings in each year relative to the base case as the difference between total operating cost savings and increases in total installed cost. DOE accounted for operating cost savings until the year when the equipment installed in 2049 should be retired. Cumulative savings are the sum of the annual NPV over the specified period.

1. Approach

The NES and NPV are a function of the total number of units in use and their efficiencies. Both the NES and NPV depend on annual shipments and equipment lifetime. Both calculations start by using the shipments estimate and the quantity of units in service derived from the shipments model.

DOE used a spreadsheet tool, available on DOE's Web site for pumps,[43] to calculate the energy savings and the national monetary costs and savings from potential standards. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs, but relies on national average equipment costs and energy costs developed from the LCC analysis. DOE projected the energy savings, energy cost savings, equipment costs, and NPV of benefits for equipment sold in each pump class from 2020 through 2049.

a. National Energy Savings

DOE calculated the NES based on the difference between the per-unit energy use under a standards-case scenario and the per-unit energy use in the base case. The average energy per unit used by the pumps in service gradually decreases in the standards case relative to the base case because more-efficient pumps are expected to gradually replace less-efficient ones.

Unit energy consumption values for each equipment class are taken from the LCC spreadsheet for each efficiency level and weighted based on market efficiency distributions. To estimate the total energy savings for each efficiency level, DOE first calculated the delta unit energy consumption (*i.e.,* the difference between the energy directly consumed by a unit of equipment in operation in the base case and the standards case) for each class of pumps for each year of the analysis period. The analysis period begins with the first full year following the estimated compliance date of any new energy conservation standards (*i.e.,* 2020). Second, DOE determined the annual site energy savings by multiplying the stock of each equipment class by vintage (*i.e.,* year of shipment) by the delta unit energy consumption for each vintage (from step one). Third, DOE converted the annual site electricity savings into the annual amount of energy saved at the source of electricity generation (primary energy) using a time series of conversion factors derived from the AEO 2014 version of EIA's National Energy Modeling System (NEMS). Finally, DOE summed the annual primary energy savings for the lifetime of units shipped over a 30-year period to calculate the total NES. DOE performed these calculations for each efficiency level considered for pumps in this rulemaking.

DOE has historically presented NES in terms of primary energy savings. On August 18, 2011, DOE published a final statement of policy in the **Federal Register** announcing its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281. After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). Therefore, DOE used the NEMS model to conduct the FFC analysis. The approach used for this NOPR, and the FFC multipliers that were applied, are described in appendix 10B of the NOPR TSD.

To properly account for national impacts, DOE adjusted the energy use and energy costs developed from the LCC spreadsheet. Specifically, in the LCC, DOE does not account for pumps sold with trimmed impellers or pumps used with VSDs, both of which may reduce the energy savings resulting from pump efficiency improvements.

In response to the Framework Document, HI mentioned that the penetration of VSDs is increasing in the

[43] DOE's Web page on pumps can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/14.*

market place and recommended that DOE explore the issue (HI, No. 25 at p. 43). DOE reviewed studies on VSD penetration and used an initial penetration of 3.2 percent in 1998 [44] with a 5 percent annual increase.[45] For more information on VSD penetration, see chapter 9 of the NOPR TSD. Although these studies are not specific to VFDs, DOE assumed all VSD use was attributable to VFD use, as VFDs are the most common type of VSD in the pumps market.[46] Based on DOE's analysis of VFD users in the consumer subgroup analysis (see section IV.I), DOE assumed VFDs would reduce energy use by 39 percent on average, which also reduces the potential energy savings from higher efficiency. However, DOE assumed based on the difficulties with VFD installation and operation,[47] that the full amount of potential savings would not be realized for all consumers. DOE is currently assuming an ''effectiveness rate'' of 75 percent; in other words DOE is assuming that consumers will achieve on average only 75 percent of the 39 percent estimated savings (*i.e.,* 29 percent savings) because of improper installation, operation inconsistent with intended use, or other equipment problems.

In the CIP Working Group meetings, one stakeholder stated that half of pumps sold by manufacturers are trimmed (*i.e.,* have impellers trimmed to meet customer needs) (Louis Starr, EERE–2013–BT–NOC–0039–0072, p. 345), while another stated that the vast majority of pumps sold by manufacturers are trimmed (Al Huber, EERE–2013–BT–NOC–0039–0009, p. 168). DOE also consulted a market expert who agreed that a majority of pumps are trimmed, and that the average trim is between 10 to 20 percent. In the NIA, DOE assumed that for all equipment classes except VTS, 50 percent of pumps not sold with VFDs are sold with impellers trimmed to 85 percent of full impeller. According to the pump affinity laws, which are a set of relationships that can be used to predict the performance of a pump when its speed or impeller diameter is changed, such an impeller trim uses 61 percent of the power of full trim. Accordingly, DOE reduced the energy use for those consumers by 39 percent. For the VTS equipment class, DOE assumed that pumps were not sold with trimmed impellers. A large percentage of these pumps are pressed stainless and will never be trimmed; the remainder of these pumps will be significantly less likely to be trimmed than other pump types because variability in the number of stages would be used in place of trimming the impellers.

DOE used the penetration rate and power reduction values for VFDs and trimmed impellers, as well as the effectiveness rate for VFDs, to create an energy use adjustment factor time series in the NES spreadsheet. DOE seeks comment on the components of this adjustment. This matter is identified as Issue 10 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

DOE considered whether a rebound effect applies to pumps. A rebound effect occurs when an increase in equipment efficiency leads to increased demand for its service. For example, when a consumer realizes that a more-efficient pump used for cooling will lower the electricity bill, that person may opt for increased comfort in the building by using the equipment more, thereby negating a portion of the energy savings. In commercial buildings, however, the person owning the equipment (*i.e.,* the building owner) is usually not the person operating the equipment (*i.e.,* the renter). Because the operator usually does not own the equipment, that person will not have the operating cost information necessary to influence their operation of the equipment. Therefore, DOE believes that a rebound effect is unlikely to occur in commercial buildings. In the industrial and agricultural sectors, DOE believes that pumps are likely to be operated whenever needed for the required process or irrigation demand, so a rebound effect is also unlikely to occur in the industrial and agricultural sectors. DOE seeks comment on whether a rebound effect should be included in the determination of annual energy savings. If a rebound effect should be included, DOE seeks data to assist in calculating the rebound effect. This matter is identified as Issue 11 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

DOE also considered whether there would be any spill-over effects related to an energy conservation standard for clean water pumps. Specifically, in the Framework Document, DOE requested information on whether design changes to clean water pumps would also be reflected in the design of pumps used in other processes and applications, thus saving additional energy not accounted for in the analysis of clean water pumps only. In response, Grundfos expected that design changes to clean water pumps would spill over, while HI believed that spillover was possible for a small number of design changes by pump manufacturers with modular designs. Grundfos and HI noted, however, that designs in alternate applications are very dependent on requirements for safety and reliability. (Grundfos, No. 24 at p. 4; HI No. 25 at p. 14.) Because DOE did not obtain any data indicating how much spillover might occur, DOE has not accounted for spillover effects in the NOPR analysis.

b. Net Present Value

To estimate the NPV, DOE calculated the net impact as the difference between total operating cost savings and increases in total installed costs. DOE calculated the NPV of each considered standard level over the life of the equipment using the following three steps.

First, DOE determined the difference between the equipment costs under the standard-level case and the base case to obtain the net equipment cost increase resulting from the higher standard level. As noted in section IV.F.2.a, DOE used a constant price assumption as the default price forecast. In addition, DOE considered two alternative price trends to investigate the sensitivity of the results to different assumptions regarding equipment price trends. One of these used an exponential fit on the deflated Producer Price Index (PPI) for pump and puming equipment manufacturing, and the other is based on the ''deflator—industrial equipment'' forecast for *AEO 2014.* The derivation of these price trends is described in appendix 10B of the NOPR TSD.

Second, DOE determined the difference between the base-case operating costs and the standard-level operating costs to obtain the net operating cost savings from each higher efficiency level.

Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase to obtain the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to 2015 and summed the discounted values to

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[44] *United States Industrial Electric Motor Systems Market Opportunities Assessment.* Tech. Washington DC: U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE), 1998. Print.

[45] Almeida, A., Chretien, B., Falkner, H., Reichert, J., West, M., Nielsen, S., and Both, D. *VSDs for Electric Motor Systems.* Tech. N.p.: European Commission Directorate-General for Transport and Energy, SAVE II Programme 2000, n.d. Print.

[46] See for example:

Energy Tips—Motor. Tech. Washington DC: U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE), 2008, Motor Tip Sheet #11,Print, p. 1.

Variable Frequency Drives. Tech. Northwest Energy Efficiency Alliance, 2000, Report #00–054, Print, Exhibit 2.1.

[47] See for example: *Variable speed drives: Introducing energy saving opportunities for business.* London: Carbon Trust, 2011.

provide the NPV for a standard at each efficiency level.

In accordance with the Office of Management and Budget's (OMB's) guidelines on regulatory analysis,[48] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for equipment and reduced purchases of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on United States Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the past 30 years.

2. Base-Case and Standards-Case Distribution of Efficiencies

As described in section IV.F.1, DOE developed a base-case distribution of efficiency levels for pumps using performance data provided by manufacturers. Because the available evidence suggests that there is no trend toward greater interest in higher pump efficiency, DOE assumed that the base case distribution would remain constant over time. The base-case efficiency distributions for each equipment class are presented in chapter 10 of the NOPR TSD. Furthermore, DOE has no reason to believe that implementation of standards would lead to an increased demand for more efficient equipment than the minimum available, and therefore does not use an efficiency trend in the standards-case scenarios.

For each efficiency level analyzed, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that compliance would be required with new standards (*i.e.,* 2020). DOE concludes that equipment efficiencies in the base case that were above the standard level under consideration would not be affected. Information from certain manufacturers indicates that for pumps not meeting a potential standard at some of the lower efficiency levels, redesign would likely target an efficiency level higher than the minimum given the level of investment required for a redesign, and the relatively more modest change in investment to design a given pump to a higher level once redesign is already taking place. However, DOE has no data that clearly indicate what percentage of failing pumps would likely be redesigned to a level higher than the minimum, or how high that level would be. In the absence of such data, DOE does not assume that manufacturers would design to a level higher than required, to avoid overestimating the energy savings that would result from the rule.

In response to the Framework Document, EEI commented that the federal regulations on motor efficiency and the requirements in the most recent building codes should be considered in the energy efficiency base case in the analyses. (EEI, No. 31 at p. 2.) DOE notes that its analysis incorporates the federal motor efficiency standards in its analysis but does not consider the use of motors more efficient than those standards. DOE also reviewed the relevant building codes and found that they do not place any requirements on pump efficiency.

I. Consumer Subgroup Analysis

In the Framework Document, DOE requested input on any consumer subgroups that should be analyzed separately. Grundfos suggested that consumer subgroups should include commercial buildings, water utilities, and irrigation. (Grundfos, No. 24 at p. 36.) While DOE is not analyzing these different groups as part of its consumer subgroup analysis, it has considered these groups as part of the LCC analysis.

For the consumer subgroup analysis, DOE estimated the impacts of the TSLs on the subgroup of consumers who operate their pumps with VFDs.[49] DOE analyzed this subgroup because the lower power typically drawn by operating pumps at reduced speed may reduce the energy and operating cost savings to the consumer that would result from improved efficiency of the pump itself. DOE estimated the average LCC savings and simple PBP for the subgroup compared with the results from the full sample of pump consumers, which did not account for VFD use.

J. Manufacturer Impact Analysis

1. Overview

DOE performed a manufacturer impact analysis (MIA) to estimate the financial impact of energy conservation standards on manufacturers of pumps and to calculate the potential impact of such standards on direct employment and manufacturing capacity.

The MIA has both quantitative and qualitative aspects. The quantitative portion of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for this rulemaking. The key GRIM inputs are data on the industry cost structure, equipment costs, shipments, markups, and conversion expenditures. The key output is the industry net present value (INPV). Different sets of assumptions will produce different results. The qualitative portion of the MIA addresses factors such as equipment characteristics, as well as industry and market trends. Chapter 12 of the NOPR TSD describes the complete MIA.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the pumps industry that includes a top-down cost analysis of manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* sales, general, and administration (SG&A) expenses; research and development (R&D) expenses; and tax rates). DOE used public sources of information, including the Securities and Exchange Commission (SEC) 10–K filings [50]; corporate annual reports; the U.S. Census Bureau's Annual Survey of Manufacturers [51]; and Hoovers reports.[52]

In phase 2 of the MIA, DOE prepared an industry cash-flow analysis to quantify the potential impacts of an energy conservation standard. In general, new or amended energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and possible changes in sales volumes.

In phase 3 of the MIA, DOE conducted detailed interviews with a representative cross-section of

[48] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/circulars_a004_a-4.*)

[49] In this analysis, DOE is not counting energy savings of switching from throttling a pump to using a VFD, as this is not a design option. DOE is simply analyzing the life-cycle costs of customers that use VFDs with their pumps.

[50] Filings & Forms, Securities and Exchange Commission (2013) (Available at: *http://www.sec.gov/edgar.shtml*) (Last accessed July 2013).

[51] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2010) (Available at: *<http://www.census.gov/manufacturing/asm/index.html>*) (Last accessed July, 2013).

[52] Hoovers | Company Information | Industry Information | Lists, D&B (2013) (Available at: *http://www.hoovers.com/*) (Last accessed July 2013).

manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.I.3 for a description of the key issues manufacturers raised during the interviews.

Additionally, in phase 3, DOE evaluates subgroups of manufacturers that may be disproportionately impacted by standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected. For today's NOPR, DOE analyzed small manufacturers as a subgroup.

The Small Business Administration (SBA) defines a small business under North American Industry Classification System (NAICS) code 333911, ''Pump and Pumping Equipment Manufacturing,'' as one having no more than 500 employees. During its research, DOE identified 25 domestic companies that manufacture equipment covered by this rulemaking and qualify as small businesses under the SBA definition. Consistent with the requirements of the Regulatory Flexibility Act, DOE's analysis of the small business subgroup is discussed in section VII.B of this NOPR and chapter 12 of the NOPR TSD.

2. GRIM Analysis

As discussed previously, DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value due to energy conservation standards. The GRIM analysis uses a discounted cash-flow methodology that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in MPCs, distributions of shipments, investments, and manufacturer margins that could result from new energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2015 (the base year of the analysis) and continuing to 2049. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. DOE applied a discount rate of 11.8 percent, derived from industry financials and then modified according to feedback received during manufacturer interviews.

In the GRIM, DOE calculates cash flows using standard accounting principles and compares changes in INPV between the base case and each TSL (the standards case). The difference in INPV between the base case and a standards case represents the financial impact of the energy conservation standard on manufacturers. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. GRIM Key Inputs

Manufacturer Production Costs

Manufacturer production costs (MPCs) are the cost to the manufacturer to produce a covered pump. The cost includes raw materials and purchased components, production labor, factory overhead, and production equipment depreciation. The changes, if any, in the MPC of the analyzed products can affect revenues, gross margins, and cash flow of the industry. In the MIA, DOE used the MPCs for each efficiency level calculated in the engineering analysis, as described in section IV.C.5 and further detailed in chapter 5 of the NOPR TSD. In addition, DOE used information from manufacturer interviews to disaggregate the MPCs into material, labor, and overhead costs.

Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by equipment class. For the base-case analysis, the GRIM uses the NIA base-case shipments forecasts from 2015 (the base year for the MIA analysis) to 2049 (the last year of the analysis period). In the shipments analysis, DOE estimates the distribution of efficiencies in the base case for all equipment classes. See section IV.G for additional details.

For the standards-case shipment forecast, the GRIM uses the NIA standards-case shipment forecasts. The NIA assumes that equipment efficiencies in the base case that do not meet the energy conservation standard in the standards case ''roll up'' to meet the standard after the compliance date. See section IV.G for additional details.

Product and Capital Conversion Costs

Energy conservation standards can cause manufacturers to incur conversion costs to make necessary changes to their production facilities and bring product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each equipment class. For the purpose of the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, and marketing, focused on making product designs comply with the energy conservation standard. Capital conversion costs are investments in property, plant, and equipment to adapt or change existing production facilities so that compliant equipment designs can be fabricated and assembled.

To evaluate the magnitude of the product and capital conversion costs the pump industry would incur to comply with new energy conservation standards, DOE used a bottom-up approach. For this approach, DOE first determined the industry-average cost, per model, to redesign pumps of varying sizes to meet each of the proposed efficiency levels. DOE then modeled the distribution of unique pump models that would require redesign at each efficiency level. For each efficiency level, DOE multiplied each unique failing model by its associated cost to redesign it to comply with the applicable efficiency level and summed the total to reach an estimate of the total product and capital conversion cost for the industry. A more detailed description of this methodology can be found in engineering section IV.C.6.

In general, DOE assumes that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the standard. The investment figures used in the GRIM can be found in section V.B.2 of today's notice. For additional information on the estimated product conversion and capital conversion costs, see chapter 12 of the NOPR TSD.

b. GRIM Scenarios

Markup Scenarios

As discussed above, MSPs include direct manufacturing production costs (*i.e.,* labor, material, and overhead estimated in DOE's MPCs), all non-production costs (*i.e.,* SG&A, R&D, and interest), and profit. To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the full MPC. The resulting MSP is the price at which the manufacturer can recover all production and non-production costs and earn a profit. Modifying these markups in the standards case yields different sets of impacts on manufacturers.

To meet new energy conservation standards, manufacturers must often invest in design changes that result in

changes to equipment design and production lines, which can result in changes to MPC and changes to working capital, as well as change to capital expenditures. Depending on the competitive pressures, some or all of the increased costs may be passed from manufacturers to the manufacturers' first consumer (typically a distributor) and eventually to consumers in the form of higher purchase prices. The MSP should be high enough to recover the full cost of the produced equipment (*i.e.,* full production and non-production costs) and yield a profit. The manufacturer markup impacts profitability. A high markup under a standards scenario suggests manufacturers can readily pass along increases in variable costs and some of the capital and product conversion costs (the one-time expenditures) to consumers. A low markup suggests that manufacturers will not be able to recover as much of the necessary investment in plant and equipment.

DOE developed initial estimates of the base case average manufacturer markup through an examination of corporate annual reports and Securities and Exchange Commission (SEC) 10–K reports. Furthermore, DOE refined the estimates of manufacturer markup by equipment class based on feedback received from manufacturers and information received from HI.

For the MIA, DOE modeled two standards case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new energy conservation standards: (1) A flat markup scenario; and (2) a cost recovery markup scenario. These scenarios lead to different markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts. DOE used these values to represent the lower and upper bounds of potential markups for manufacturers.

Under the flat markup scenario, DOE maintains the same markup in the base case and standards case. This results in no price changes at a given efficiency level for the manufacturer's first consumer. Based on the MSP, component cost, performance, and efficiency data supplied by both individual manufacturers and HI, DOE concluded the non-production cost markup (which includes SG&A expenses, R&D expenses, interest, and profit) to vary by efficiency level. DOE calculated the flat markups as follows:

	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC	1.37	1.38	1.39	1.39	1.39	1.39
ESFM	1.33	1.37	1.38	1.39	1.39	1.39
IL	1.43	1.46	1.47	1.47	1.47	1.47
VTS	1.37	1.37	1.40	1.40	1.40	1.40

Because this markup scenario assumes that manufacturers would not increase their pricing for a given efficiency level as a result of a standard even as they incur conversion costs, this markup scenario is considered a lower bound.

In the cost recovery markup scenario, manufacturer markups are set so that manufacturers recover their conversion costs, which are investments necessary to comply with the new energy conservation standard, over the analysis period. That cost recovery is enabled by an increase in mark-up, which results in higher manufacturer sales prices for pumps even as manufacturer product costs stay the same. The cost recovery calculation assumes manufacturers raise prices only on models where a redesign is necessitated by the standard. The additional revenue due to the increase in markup results in manufacturers recovering 100% of their conversion costs over the 30-year analysis period, taking into account the time-value of money. DOE calculated the cost recovery markups are calculated as follows:

	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC	1.37	1.57	1.68	1.74	1.92	2.13
ESFM	1.33	1.45	1.51	1.54	1.61	1.70
IL	1.43	1.53	1.62	1.73	1.88	2.02
VTS	1.37	1.49	1.47	1.54	1.65	1.77

Because this markup scenario models the maximum level to which manufacturers would increase their pricing as a result of the given standard, this markup scenario is considered an upper bound to markups.

Depending on the equipment class and the standard level being analyzed, the cost-recovery markup results in a simple payback period of 7 to 8 years for the industry. This means the total additional revenues due to a higher markup equal the industry conversion cost within seven to eight years, not taking into account the time value of money. The simple payback period varies at each TSL due to differences in the number of models requiring redesign, the total conversion costs, and the number of unit over which costs can be recouped. The simple payback timeframes are as follows:

	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Years	0	8	7	7	7	7

The payback period is greatest at TSL 1 due to the relatively high numbers of models that require redesign as compared to the number of units sold at that level.

3. Manufacturer Interviews

As part of the MIA, DOE discussed potential impacts of standards with ten pump manufacturers. The interviewed manufacturers account for approximately 40 percent of the domestic pump market. In interviews, DOE asked manufacturers to describe their major concerns about this rulemaking. This section (IV.J.3)

highlights manufacturers' interview statements that helped shaped DOE's understanding of the potential impacts of an energy conservation standard on the industry.

a. Alignment With European Union Energy Efficiency Standards

Multiple manufacturers emphasized the importance of harmonizing U.S. energy conservation standards with existing EU standards for clean water pumps. Manufacturers stated that harmonized standards would promote regulatory consistency and would enable them to better coordinate product redesigns and reduce conversion costs. If U.S. and EU standards are not harmonized, some manufacturers noted they would have to carry a greater number of product lines to service separate markets or to comply with efficiency standards in both domestic and European markets. Manufacturers also indicated that harmonized standards could help to improve U.S. manufacturers' access to foreign markets and would help to avoid a situation where lower domestic standards enable EU-compliant manufacturers to market their pumps to U.S. consumers as more efficient than pumps manufactured domestically. Manufacturers noted that expansion beyond the EU Directive parameters will add complexity and cost to the tasks of the manufacturers and create a significant financial burden for manufacturers to comply with the standards, particularly with respect to double-suction pumps and vertical turbines beyond 6-inch bowl assemblies. *See* Section III.A.1.

In contrast, one manufacturer stated that aligning U.S. standards with EU standards would give European manufacturers an advantage because they would have products that could immediately comply with the U.S. standard, while U.S. manufacturers would have conversion costs to achieve the new efficiency level.

b. Pattern Production and Engineering Constraints

Many manufacturers raised concerns regarding potential tooling bottlenecks. In general, much of the industry relies on the same resources for patterns used to produce the impeller and bowl. Manufacturers were concerned there would not be enough pattern production capacity available if the entire industry attempted to redesign products within the same three to five year timeframe. Furthermore, manufacturers expressed concern surrounding insufficient availability of engineering resources (mainly design engineers) required to redesign a high volume of pump lines during a short time period. Manufacturers stated that limited pump design expertise in the industry could create time delays in complying with new standards.

c. Conversion Requirements

Manufacturers raised concerns over potentially significant barriers to achieving compliance with new standards, particularly at higher efficiency levels. If U.S. standards exceeded levels comparable to an EU minimum efficiency index (MEI) [53] of 0.4, several manufacturers indicated they would have to develop entirely new product platforms at significant cost. At an MEI of 0.7, many indicated they would close manufacturing facilities rather than upgrade them to comply with any efficiency standards. Additionally, manufacturers suggested that conversion requirements would likely accelerate trends toward industry consolidation, as smaller manufacturers elect to exit the market rather than invest in product redesigns.

d. Exclusion of Specific Pump Types

Manufacturers expressed concern over which pumps would be included in the rulemaking; two of these manufacturers raised concerns specifically with the prospect of regulating circulator pumps (*i.e.,* small pumps that circulate liquid in water heating or hydronic space conditioning systems in buildings). Manufacturers stated that compared to the European market, the U.S. market for circulator pumps is very small and would not present a large opportunity to save energy. Manufacturers also stated that the investment required by U.S. circulator pump manufacturers will be too high relative to the return on investment. They also mentioned that in most situations, due to the higher cost of high-efficiency equipment and the relatively low cost of energy in the U.S., consumers would not see a return on investment for a long period of time.

K. Emissions Analysis

In the emissions analysis, DOE estimated the reduction in power sector emissions of CO_2, NO_X, SO_2, Hg, CH4, and N_2O from new energy conservation standards for the considered pump equipment. In addition, DOE estimated emissions impacts in production activities (extracting, processing, and transporting fuels) that provide the energy inputs to power plants. These are referred to as ''upstream'' emissions. Together, these emissions account for the full-fuel-cycle (FFC). In accordance with DOE's FFC Statement of Policy (76 FR 51281, August 18, 2011, as amended at 77 FR 49701, Aug. 17, 2012), this FFC analysis includes impacts on emissions of methane (CH_4) and nitrous oxide (N_2O), both of which are recognized as greenhouse gases.

DOE primarily conducted the emissions analysis using emissions factors for CO_2 and most of the other gases derived from data in *AEO 2014.* Combustion emissions of CH_4 and N_2O were estimated using emissions intensity factors published by the Environmental Protection Agency (EPA) through its GHG Emissions Factors Hub.[54] DOE developed separate emissions factors for power sector emissions and upstream emissions. The method that DOE used to derive emissions factors is described in chapter 13 of the NOPR TSD.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying the physical units by the gas's global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[55] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

EIA prepares the *Annual Energy Outlook* using NEMS. Each annual version of NEMS incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2014* generally represents current legislation and environmental regulations, including recent Government actions, for which implementing regulations were available as of October 31, 2013.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR; 70 FR 25162, May 12, 2005),

[53] The EU sets efficiency standards based on desired percentages of the market to cut off, which it refers to as minimum efficiency indexes, or MEIs. A MEI of 0.4, for example, indicates an efficiency standard designed to eliminate the least efficient 40 percent of products from the market.

[54] See: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[55] 1 IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, Chapter 8.

which created an allowance-based trading program that operates along with the Title IV program. CAIR was remanded to the U.S. Environmental Protection Agency (EPA) by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect. See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208, August 8, 2011. On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR.[56] The court ordered EPA to continue administering CAIR. The emissions factors used for today's NOPR, which are based on *AEO 2014,* assume that CAIR remains a binding regulation through 2040.[57]

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning around 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304, Feb. 16, 2012. In the final MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2014* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap that would be established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. Therefore, DOE believes that energy efficiency standards will reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[58] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in today's NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps, and as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2014,* which incorporates MATS.

In response to the Framework Document, EEI noted that EPA projects significant reductions in particulate emissions from electric generating units as a result of MATS compliance. (EEI, No.31 at p. 4.) EEI also believed that DOE should incorporate the most recent AEO and EPA's most recent analyses in the emissions analysis. Power sector emissions of criteria air pollutants have dropped dramatically. (EEI, No. 31 at p. 4.) As discussed above, the *AEO 2014* projections that serve as a reference case for measuring the impacts of potential standards account for the MATS and other emissions rules for which implementing regulations were available as of October 31, 2013.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this NOPR, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the considered efficiency levels. To make this calculation similar to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period for each efficiency level. This section summarizes the basis for the monetary values used for CO_2 and NO_X emissions and presents the values considered in this rulemaking.

For this NOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for those values is provided in the following subsection, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the NOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, Oct. 4, 1993, agencies must, to the extent permitted by law, assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many

[56] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

[57] On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion. The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR. See *EPA* v. *EME Homer City Generation,* No 12–1182, slip op. at 32 (U.S. April 29, 2014). Because DOE is using emissions factors based on *AEO 2014* for today's NOPR, the analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of SO_2 emissions.

[58] CSAPR also applies to NO_X and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed the SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of challenges. A recent report from the National Research Council points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of greenhouse gases; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. The agency can estimate the benefits from reduced emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying the future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

e. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

f. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change. Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects, although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.4 presents the values in the 2010 interagency group report,[59] which is reproduced in appendix 14A of the NOPR TSD.

[59] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

TABLE IV.4—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[in 2007 dollars per metric ton CO_2]

Year	Discount rate (%)			
	5	3	2.5	3
	Average	Average	Average	95th Percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for today's notice were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature.[60] (See appendix 14B of the NOPR TSD for further information.) Table IV.5 shows the updated sets of SCC estimates in five year increments from 2010 to 2050. Appendix 14B of the NOPR TSD provides the full set of SCC estimates. The central value that emerges is the average SCC across models at the 3 percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.5—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE, 2010–2050

[in 2007 dollars per metric ton CO_2]

Year	Discount rate (%)			
	5	3	2.5	3
	Average	Average	Average	95th Percentile
2010	11	32	51	89
2015	11	37	57	109
2020	12	43	64	128
2025	14	47	69	143
2030	16	52	75	159
2035	19	56	80	175
2040	21	61	86	191
2045	24	66	92	206
2050	26	71	97	220

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report, adjusted to 2013$ using the Gross Domestic Product price deflator. For each of the four cases specified, the values used for emissions in 2015 were $12.0, $40.5, $62.4, and $119 per metric ton avoided (values expressed in 2013$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

[60] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

2. Valuation of Other Emissions Reductions

As noted above, DOE has taken into account how new energy conservation standards would reduce NO_X emissions in those 22 States not affected by emissions caps. DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's NOPR based on estimates found in the relevant scientific literature. Estimates of monetary value for reducing NO_X from stationary sources range from $476 to $4,893 per ton (2013$).[61] DOE calculated monetary benefits using a medium value for NO_X emissions of $2,684 per short ton (in 2013$), and real discount rates of 3 percent and 7 percent.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. It has not included such monetization in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the power generation industry that would result from the adoption of new or amended energy conservation standards. In the utility impact analysis, DOE analyzes the changes in installed electrical capacity and generation that would result for each trial standard level. The analysis is based on published output from NEMS, which is a public domain, multi-sectored, partial equilibrium model of the U.S. energy sector. Each year, NEMS is updated to produce the AEO reference case as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses those published side cases that incorporate efficiency-related policies to estimate the marginal impacts of reduced energy demand on the utility sector. The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards. Chapter 15 of the NOPR TSD describes the utility impact analysis in further detail.

N. Employment Impact Analysis

Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the equipment subject to standards; the MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient equipment. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on the purchase of new products; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[62] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data, net national employment may increase because of shifts in economic activity resulting from new energy conservation standards for pumps.

For the standard levels considered in this NOPR, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[63] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 187 sectors most relevant to industrial, commercial, and residential building energy use. DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run. For the NOPR, DOE used ImSET only to estimate short-term (through 2024) employment impacts.

For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results

A. Trial Standard Levels

1. Trial Standard Level Formulation Process and Criteria

DOE developed six efficiency levels, including a baseline level, for each equipment class analyzed in the LCC, NIA, and MIA. TSL 5 was selected at the max-tech level for these equipment classes, and also represented the highest energy savings, NPV, and net benefit to the nation scenario. TSL 1, TSL 2, TSL 3, and TSL 4 were selected to provide intermediate efficiency levels between the baseline efficiency level and TSL 5 and allow for an evaluation of manufacturer impact at each level. As discussed in section IV.A.2.a, for the RSV equipment classes, DOE proposed to set the baseline and max-tech levels equal to those established in Europe, but was unable to develop intermediate efficiency levels or TSLs due to lack of available cost data for this equipment. As a result, the baseline efficiency level

[61] U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,* Washington, DC. Available at: *www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2006_cb/2006_cb_final_report.pdf.*

[62] *See* Bureau of Economic Analysis, ''Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),'' U.S. Department of Commerce (1992).

[63] M. J. Scott, O. V. Livingston, P. J. Balducci, J. M. Roop, and R. W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

has been specified for all TSLs 1 through 4, with the max-tech level being specified for TSL 5. Table V.1 shows the mapping between TSLs and efficiency levels for all equipment classes.

TABLE V.1—MAPPING BETWEEN TSLS AND EFFICIENCY LEVELS

Equipment Class	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC.1800	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
ESCC.3600	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
ESFM.1800	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
ESFM.3600	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
IL.1800	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
IL.3600	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
RSV.1800 *	EL 0	EL 0	EL 0	EL 0	EL 0	EL 5
RSV.3600 *	EL 0	EL 0	EL 0	EL 0	EL 0	EL 5
VTS.1800 *	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
VTS.3600	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5

* Equipment classes not analyzed due to lack of available data (in the case of RSV) or lack of market share (in the case of VTS.1800).

2. Trial Standard Level Equations

Because the chosen efficiency metric, PEI, is a normalized metric targeted to create a standard level of 1.00, DOE has expressed its efficiency levels in terms of C-values. Each C-value represents a normalized efficiency for all size pumps, across the entire equipment class. (See section III.D.1 for more information about C-values and the related equations.) Table V.2 shows the appropriate C-values for each equipment class, at each TSL.

TABLE V.2—C-VALUES AT EACH TSL

Equipment class	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC.1800	134.43	131.63	128.47	126.67	125.07	123.71
ESCC.3600	135.94	134.60	130.42	128.92	127.35	125.29
ESFM.1800	134.99	132.95	128.85	127.04	125.12	123.71
ESFM.3600	136.59	134.98	130.99	129.26	127.77	126.07
IL.1800	135.92	133.95	129.30	127.30	126.00	124.45
IL.3600	141.01	138.86	133.84	131.04	129.38	127.35
RSV.1800 *	129.63	129.63	129.63	129.63	129.63	129.63
RSV.3600 *	133.20	133.20	133.20	133.20	133.20	133.20
VTS.1800 *	137.62	135.93	134.13	130.83	128.92	127.29
VTS.3600	137.62	135.93	134.13	130.83	128.92	127.29

* Equipment classes not analyzed due to lack of available data (in the case of RSV) or lack of market share (in the case of VTS.1800).

B. Economic Justification and Energy Savings

1. Economic Impacts on Commercial Consumers

DOE analyzed the economic impacts on pump consumers by looking at the effects potential standards would have on the LCC and PBP, when compared to the base case described in section IV.F.1. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency equipment would affect consumers in two ways: (1) Purchase price would increase over the price of less efficient equipment currently in the market, and (2) annual operating costs would decrease as a result of increased energy savings. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* equipment price plus installation costs), and operating costs (*i.e.,* annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses equipment lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.3 through Table V.16 show the LCC and PBP results for all efficiency levels considered for all analyzed equipment classes. The average costs at each TSL are calculated considering the full sample of consumers that have levels of efficiency in the base case equal to or above the given TSL (who are not affected by a standard at that TSL), as well as consumers who had non-compliant pumps in the base case and purchase more expensive and efficient redesigned pumps in the standards case. The simple payback and LCC savings are measured relative to the base-case efficiency distribution in the compliance year (see section IV.F.1 for a description of the base case).

TABLE V.3—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ESCC.1800

TSL	Efficiency level	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Base Case	$1,639	$2,271	$17,546	$19,185	.....	13
1	1	1,672	2,261	17,470	19,142	3.3	13
2	2	1,704	2,240	17,317	19,021	2.2	13
3	3	1,768	2,222	17,177	18,945	2.6	13
4	4	1,863	2,198	16,997	18,861	3.1	13
5	5	2,026	2,172	16,796	18,822	3.9	13

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the base case.

TABLE V.4—LCC SAVINGS RELATIVE TO THE BASE CASE EFFICIENCY DISTRIBUTION FOR ESCC.1800

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net Cost	(2013$)
1	1	12	$43
2	2	11	164
3	3	23	240
4	4	30	324
5	5	42	362

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.5—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ESCC.3600

TSL	Efficiency level	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Base Case	$1,092	$1,592	$9,823	$10,915	.....	11
1	1	1,098	1,588	9,800	10,898	1.4	11
2	2	1,111	1,574	9,713	10,823	1.0	11
3	3	1,141	1,565	9,653	10,794	1.8	11
4	4	1,170	1,551	9,566	10,736	1.9	11
5	5	1,215	1,528	9,422	10,638	1.9	11

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the base case.

TABLE V.6—LCC SAVINGS RELATIVE TO THE BASE CASE EFFICIENCY DISTRIBUTION FOR ESCC.3600

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	(2013$)
1	1	0.7	$17
2	2	1.8	92
3	3	14	122
4	4	14	180
5	5	12	278

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.7—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ESFM.1800

TSL	Efficiency level	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Base Case	$1,891	$3,424	$40,983	$42,874	.....	23
1	1	1,893	3,423	40,973	42,866	2.4	23
2	2	1,943	3,406	40,759	42,701	2.8	23

TABLE V.7—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ESFM.1800—Continued

TSL	Efficiency level	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
3	3	2,004	3,384	40,498	42,502	2.8	23
4	4	2,151	3,342	39,988	42,139	3.1	23
5	5	2,314	3,301	39,498	41,812	3.4	23

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the base case.

TABLE V.8—LCC SAVINGS RELATIVE TO THE BASE CASE EFFICIENCY DISTRIBUTION FOR ESFM.1800

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	(2013$)
1	1	0.26	$8.0
2	2	6.5	173
3	3	15	372
4	4	24	735
5	5	26	1,062

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.9—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ESFM 3600

TSL	Efficiency level	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Base Case	$1,349	$5,278	$51,268	$52,616	.....	20
1	1	1,357	5,271	51,201	52,558	1.2	20
2	2	1,396	5,218	50,674	52,070	0.8	20
3	3	1,441	5,171	50,214	51,655	0.9	20
4	4	1,529	5,117	49,676	51,205	1.1	20
5	5	1,648	5,036	48,890	50,538	1.2	20

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the base case.

TABLE V.10—LCC SAVINGS RELATIVE TO THE BASE CASE EFFICIENCY DISTRIBUTION FOR ESFM.3600

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	(2013$)
1	1	0.29	$58
2	2	1.9	547
3	3	4.7	961
4	4	7.0	1,411
5	5	8.4	2,078

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.11—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR IL.1800

TSL	Efficiency level	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Base Case	$2,128	$1,891	$16,760	$18,888	.....	16
1	1	2,145	1,884	16,692	18,837	2.3	16
2	2	2,194	1,868	16,545	18,739	2.8	16
3	3	2,281	1,852	16,407	18,688	3.9	16
4	4	2,432	1,835	16,254	18,686	5.4	16

TABLE V.11—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR IL.1800—Continued

TSL	Efficiency level	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
5	5	2,614	1,811	16,040	18,654	6.1	16

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the base case.

TABLE V.12—LCC SAVINGS RELATIVE TO THE BASE CASE EFFICIENCY DISTRIBUTION FOR IL.1800

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	(2013$)
1	1	1.8	$51
2	2	6.9	149
3	3	15	200
4	4	25	202
5	5	36	234

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.13—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR IL.3600

TSL	Efficiency level	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Base Case	$1,473	$2,046	$14,211	$15,684		13
1	1	1,484	2,038	14,155	15,639	1.4	13
2	2	1,525	2,019	14,020	15,545	1.9	13
3	3	1,578	1,997	13,865	15,443	2.1	13
4	4	1,650	1,980	13,747	15,397	2.7	13
5	5	1,797	1,946	13,510	15,307	3.2	13

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the base case.

TABLE V.14—LCC SAVINGS RELATIVE TO THE BASE CASE EFFICIENCY DISTRIBUTION FOR IL.3600

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	(2013$)
1	1	2.0	$46
2	2	13	139
3	3	11	241
4	4	14	288
5	5	20	377

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.15—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VTS.3600

TSL	Efficiency level	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Base Case	$692	$1,025	$5,857	$6,549		11
1	1	697	1,025	5,855	6,551	11	11
2	2	711	1,021	5,830	6,542	4.2	11
3	3	732	1,002	5,726	6,458	1.7	11
4	4	772	989	5,654	6,426	2.2	11
5	5	821	977	5,584	6,405	2.7	11

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the base case.

TABLE V.16—LCC SAVINGS RELATIVE TO THE BASE CASE EFFICIENCY DISTRIBUTION FOR VTS.3600

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net Cost	(2013$)
1	1	1.4	$(2.4)
2	2	21	7.2
3	3	4.4	91
4	4	8.5	123
5	5	13	144

* The calculation includes consumers with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

As shown in Table V.17 through Table V.23, the results of the life-cycle cost subgroup analysis indicate that for all equipment classes analyzed, the VFD subgroup fared slightly worse than the average consumer, with the VFD subgroup being expected to have lower LCC savings and longer payback periods than average. This occurs mainly because with power reduction through use of a VFD, consumers use and save less energy from pump efficiency improvements than do consumers who do not use VFDs and so would benefit less from the energy savings.[64] Chapter 11 of the NOPR TSD provides more detailed discussion on the LCC subgroup analysis and results.

TABLE V.17—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, ESCC.1800

TSL	Energy efficiency level	LCC savings (2013$ *)		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$12	$43	5.6	3.3
2	2	71	164	3.6	2.2
3	3	91	240	4.4	2.6
4	4	104	324	5.2	3.1
5	5	63	362	6.5	3.9

* Parentheses indicate negative values.

TABLE V.18—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, ESCC.3600

TSL	Energy efficiency level	LCC savings (2013$ *)		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$8.7	$17	2.3	1.4
2	2	51	92	1.6	1.0
3	3	57	122	2.8	1.8
4	4	83	180	3.0	1.9
5	5	127	278	3.0	1.9

* Parentheses indicate negative values.

TABLE V.19—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, ESFM.1800

TSL	Energy efficiency level	LCC savings (2013$ *)		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$4.3	$8.0	3.9	2.4
2	2	85	173	4.6	2.8
3	3	186	372	4.6	2.8
4	4	355	735	5.1	3.1
5	5	494	1,062	5.6	3.4

* Parentheses indicate negative values.

[64] In this analysis, DOE does not count energy savings of switching from throttling a pump to using a VFD, as this is not a design option. Instead, DOE analyzes the life-cycle costs of consumers who use VFDs with their pumps.

TABLE V.20—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, ESFM.3600

TSL	Energy efficiency level	LCC savings (2013$ *)		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$33	$58	2.0	1.2
2	2	319	547	1.3	0.8
3	3	558	961	1.4	0.9
4	4	802	1,411	1.8	1.1
5	5	1,168	2,078	2.0	1.2

* Parentheses indicate negative values.

TABLE V.21—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, IL.1800

TSL	Energy efficiency level	LCC savings (2013$ *)		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$26	$51	3.6	2.3
2	2	67	149	4.5	2.8
3	3	64	200	6.4	3.9
4	4	6.3	202	8.8	5.4
5	5	($46)	234	9.9	6.1

* Parentheses indicate negative values.

TABLE V.22—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, IL.3600

TSL	Energy efficiency level	LCC savings (2013$ *)		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$25	$46	2.2	1.4
2	2	67	139	3.1	1.9
3	3	111	241	3.5	2.1
4	4	113	288	4.3	2.7
5	5	112	377	5.2	3.2

* Parentheses indicate negative values.

TABLE V.23—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, VTS.3600

TSL	Energy efficiency level	LCC savings (2013$ *)		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$(3.5)	$(2.4)	18	11
2	2	(2.6)	7.2	6.6	4.2
3	3	44	91	2.7	1.7
4	4	50	123	3.5	2.2
5	5	46	144	4.2	2.7

* Parentheses indicate negative values.

c. Rebuttable Presumption Payback

As discussed in section III.H.2, EPCA provides a rebuttable presumption that, in essence, an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 6316(a). The results of this analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. For comparison with the more detailed analytical results, DOE calculated a rebuttable presumption payback period for each TSL. Table V.24 shows the rebuttable presumption payback periods for the pump equipment classes.

TABLE V.24—REBUTTABLE PRESUMPTION PAYBACK PERIODS FOR PUMP EQUIPMENT CLASSES

Equipment class	Rebuttable presumption payback (years)				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC.1800	3.4	2.2	2.6	3.1	3.9
ESCC.3600	1.4	1.0	1.7	1.8	1.9
ESFM.1800	2.4	2.8	2.8	3.1	3.4
ESFM.3600	1.2	0.8	0.9	1.1	1.2
IL.1800	2.3	2.8	3.9	5.4	6.0
IL.3600	1.3	1.9	2.1	2.7	3.2
VTS.3600	11	4.2	1.8	2.3	2.7

2. Economic Impacts on Manufacturers

As noted above, DOE performed an MIA to estimate the impact of energy conservation standards on manufacturers of pumps. The following section summarizes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash-Flow Analysis Results

Table V.25 and Table V.26 depict the financial impacts (represented by changes in INPV) of energy standards on manufacturers of pumps, as well as the conversion costs that DOE expects manufacturers would incur for all equipment classes at each TSL. To evaluate the range of cash flow impacts on the CIP industry, DOE modeled two different mark-up scenarios using different assumptions that correspond to the range of anticipated market responses to energy conservation standards: (1) the flat markup scenario; and (2) the cost recovery markup scenario. Each of these scenarios is discussed immediately below.

Under the flat markup scenario, DOE maintains the same markup in the base case and standards case. This results in no price change at a given efficiency level for the manufacturer's first consumer. Because this markup scenario assumes that manufacturers would not increase their pricing as a result of a standard even as they incur conversion costs, this markup scenario is the most negative and results in the most negative impacts on INPV.

In the cost recovery markup scenario, manufacturer markups are set so that manufacturers recover their conversion costs over the analysis period. That cost recovery is enabled by an increase in mark-up, which results in higher sales prices for pumps even as manufacturer product costs stay the same. The cost recovery calculation assumes manufacturers raise prices on models where a redesign is necessitates by the standard. This cost recovery scenario results in more positive results than the flat markup scenario.

The set of results below shows potential INPV impacts for pump manufacturers; Table V.25 reflects the lower bound of impacts (*i.e.,* the flat markup scenario), and Table V.26 represents the upper bound (the cost recovery markup scenario).

Each of the modeled scenarios results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the base case and each standards case that results from the sum of discounted cash flows from the base year 2014 through 2048, the end of the analysis period.

To provide perspective on the short-run cash flow impact, DOE includes in the discussion of the results below a comparison of free cash flow between the base case and the standards case at each TSL in the year before new standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the base case.

TABLE V.25—MANUFACTURER IMPACT ANALYSIS FOR PUMPS—FLAT MARKUP SCENARIO *

*	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	$M	121.4	111.6	81.9	22.4	(85.0)	(228.4)
Change in INPV	$M		(9.8)	(39.5)	(99)	(206.3)	(349.8)
	%		(8.0)	(32.5)	(81.6)	(170.0)	(288.2)
Total Conversion Costs.	$M		19.9	78.4	174.3	335.0	547.7
Free Cash Flow (2018).	$M	12.2	5.6	(16.1)	(58.7)	(130.1)	(224.4)
Free Cash Flow (2018).	% Change		(54.3)	(232.5)	(582.0)	(1167.5)	(1942.4)

* Values in parentheses are negative values.

TABLE V.26—MANUFACTURER IMPACT ANALYSIS FOR PUMPS—COST RECOVERY MARKUP SCENARIO *

*	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	$M	121.4	121.8	129.7	125.4	114.1	94.1
Change in INPV	$M		0.4	8.3	4.0	(7.2)	(27.3)
	%		0.3	6.9	3.3	(6.0)	(22.5)

TABLE V.26—MANUFACTURER IMPACT ANALYSIS FOR PUMPS—COST RECOVERY MARKUP SCENARIO *—Continued

%	Units	Base case	Trial standard level				
			1	2	3	4	5
Total Conversion Costs.	$M	.....	19.9	78.4	174.3	335.0	547.7
Free Cash Flow (2018).	$M	12.2	5.6	(16.1)	(58.7)	(130.1)	(224.4)
Free Cash Flow (2018).	% Change ...	.....	(54.3)	(232.5)	(582.0)	(1167.5)	(1942.4)

* Values in parentheses are negative values.

TSL 1 represents EL 1 for all equipment classes. At TSL 1, DOE estimates impacts on INPV for pump manufacturers to range from −8.0 percent to 0.3 percent, or a change in INPV of −$9.8 million to $0.4 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 54.3 percent to $5.6 million, compared to the base-case value of $12.2 million in the year before the compliance date (2019). The industry would need to either drop product lines or engage in redesign of approximately 10% of their models. DOE estimates that manufacturers would incur conversion costs totaling $19.9 million, driven by hydraulic redesigns.

TSL 2 represents EL 2 across all equipment classes. At TSL 2, DOE estimates impacts on INPV for pump manufacturers to range from −32.5 percent to 6.9 percent, or a change in INPV of −$39.5 million to $8.3 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 232.5 percent to −$16.1 million, compared to the base-case value of $12.2 million in the year before the compliance date (2019). Conversion costs for an estimated 25% of model offerings, would be approximately $78.4 million for the industry. At TSL 2, the industry's annual free cash flow is estimated to drop below zero in 2018 and 2019, the years where conversion investments are the greatest. The negative free cash flow indicates that at least some manufacturers in the industry would need to access cash reserves or borrow money from capital markets to cover conversion costs.

TSL 3 represents EL 3 for all equipment classes. At TSL 3, DOE estimates impacts on INPV for pump manufacturers to range from −81.6 percent to 3.3 percent, or a change in INPV of −$99 million to $4 million. At TSL 3, industry conversion costs for an estimated 40% of model offerings would be approximately $174.3 million. As conversion costs increase, free cash flow continues to drop in the years before the standard year. This increases the likelihood that manufacturers will need to seek outside capital to support their conversion efforts. Furthermore, as more models require redesign, technical resources for hydraulic redesign could become an industry-wide constraint. Participants in the CIP Working Group noted that the industry as a whole relies on a limited pool of hydraulic redesign engineers and consultants. These specialists can support only a limited number of redesigns per year. Industry representatives stated that TSL 3 could be an upper bound to the number of redesigns possible in the four years between announcement and effective year of the final rule.

TSL 4 represents EL4 across all equipment classes. At TSL 4, DOE estimates impacts on INPV for pump manufacturers to range from −170 percent to −6 percent, or a change in INPV of −$206.3 million to −$7.2 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 1167.5 percent relative to the base-case value of $12.2 million in the year before the compliance date (2019). The total industry conversion costs for an estimated 55% of model offerings would be approximately $335 million. The 1167.5% drop in free cash flow in 2019 indicates that the conversion costs are a very large investment relative to typical industry operations. As noted above, at TSL 2 and TSL 3, manufacturers may need to access cash reserves or outside capital to finance conversion efforts. Additionally, the industry may not be able to convert all necessary models before the compliance date of the standard.

TSL 5 represents max-tech across all equipment classes. At TSL 5, DOE estimates impacts on INPV for pump manufacturers to range from −288.2 percent to −22.5 percent, or a change in INPV of −$349.8 million to −$27.3 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 1942.4 percent relative to the base-case value of $12.2 million in the year before the compliance date (2019). At max-tech, DOE estimates total industry conversion costs for an estimated 70% of model offerings, would be approximately $547.7 million. The negative impacts related to cash availability, need for outside capital, and technical resources constraints at TSLs 2, 3, and 4 would increase at TSL 5.

DOE requests comment on the capital conversion costs and product conversion costs estimated for each TSL. This matter is identified as Issue 12 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

In section VI, DOE proposes labeling requirements recommended by the CIP Working Group. DOE recognizes that such requirements may result in costs to manufacturers. Costs of updating marketing materials for redesigned pumps in each standards case were included in the conversion costs for the industry and are accounted for in the industry cash-flow analysis results and industry valuation figures presented in this section. However, DOE notes that costs of updating marketing materials for pumps that do not have to be redesigned to meet the standard are not considered in the industry valuation figures because these costs would be incurred by manufacturers in order to make representations of energy use (PEI) according to the proposed test procedure, as well as to include labeling requirements, regardless of whether DOE set an energy conservation standard or what TSL DOE selected. These costs are discussed in section VI.

b. Impacts on Direct Employment

To quantitatively assess the impacts of energy conservation standards on direct employment in the pumps industry, DOE used the GRIM to estimate the domestic labor expenditures and number of employees in the base case and at each TSL from 2015 through 2049. DOE used statistical data from the U.S. Census Bureau's 2011 Annual Survey of Manufacturers

(ASM),[65] the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures related to manufacturing of the product are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs. Based on feedback from manufacturers, DOE believes that 99% of the covered pumps are produced in the U.S. Therefore, 99% of the total labor expenditures contribute to domestic production employment.

The total domestic labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours multiplied by the labor rate found in the U.S. Census Bureau's 2011 ASM). The estimates of production workers in this section cover workers, including line-supervisors directly involved in fabricating and assembling a product within the manufacturing facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this rulemaking. DOE estimates that in the absence of energy conservation standards, there would be 415 domestic production workers for covered pumps.

In the standards case, DOE estimates an upper and lower bound to the potential changes in employment that result from the standard. Table V.27 shows the range of the impacts of potential energy conservation standards on U.S. production workers of pumps.

TABLE V.27—POTENTIAL CHANGES IN THE TOTAL NUMBER OF PUMP PRODUCTION WORKERS IN 2020 *

	Trial standard level					
	Base case	1	2	3	4	5
Potential Changes in Domestic Production Workers in 2020 (relative to a base case employment of 415).	.....	(41) to 0	(104) to 0	(166) to 0	(228) to 0	(290) to 0.

* Parentheses indicate negative values.

Based on the engineering analysis, MPCs and labor expenditures do not vary with efficiency and increasing TSLs. Additionally, the shipments analysis models consistent shipments at all TSLs. As a result, the GRIM predicts no change in employment in the standards case. DOE considers this to be the upper bound for change in employment. For a lower bound, DOE assumes a loss of employment that is directly proportional to the portion of pumps being eliminated from the market. Additional detail can be found in chapter 12 of the TSD.

DOE notes that the direct employment impacts discussed here are independent of the indirect employment impacts to the broader U.S. economy, which are documented in chapter 15 of the NOPR TSD.

DOE requests comment on the potential impacts on manufacturer employment and the specific drivers of any expected change in production line employment. This matter is identified as Issue 13 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

c. Impacts on Manufacturing Capacity

Based on the engineering analysis, DOE concludes that higher efficiency pumps require similar production facilities, tooling, and labor as baseline efficiency pumps. Based on the engineering analysis and interviews with manufacturers, a new energy conservation standard is unlikely to create production capacity constraints.

However, industry representatives, in interviews and in the CIP Working Group meetings, expressed concern about the industry's ability to complete the necessary number of hydraulic redesigns required to comply with a new standard. (EERE–2013–BT–NOC–0039–0109, pp. 280–283) In the industry, not all companies have the in-house capacity to redesign pumps. Many companies rely on outside consultants for a portion or all of their hydraulic design projects. Manufacturers were concerned that a new standard would create more demand for hydraulic design technical resources than are available in the industry.

The number of pumps that require redesign is directly tied to the proposed standard level. The level proposed today is based on a level that the CIP Working Group considered feasible for the industry. DOE requests comments on the potential for production line capacity constraints and on the potential for technical resource constraints due to the proposed standard.

DOE requests comments and data on capacity constraints at each TSL—including production capacity constraints, engineering resource constraints, and testing capacity constraints. In particular, DOE requests comment on whether the proposed compliance date allows for a sufficient conversion period to make the equipment design and facility updates necessary to meet a new standard. This matter is identified as Issue 14 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. Using average cost assumptions developed for an industry cash-flow estimate is inadequate to

[65] ''Annual Survey of Manufactures (ASM),'' U.S. Census Bureau (2011) (Available at: *http://www.census.gov/manufacturing/asm/*).

assess differential impacts among manufacturer subgroups.

For the CIP industry, DOE identified and evaluated the impact of energy conservation standards on one subgroup—small manufacturers. The SBA defines a ''small business'' as having 500 employees or less for NAICS 333911, ''Pump and Pumping Equipment Manufacturing.'' Based on this definition, DOE identified 39 manufacturers in the CIP industry that qualify as small businesses. For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility analysis in section VI.B of this notice and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE looks at product-specific Federal regulations that could affect pumps manufacturers and with which compliance is required approximately three years before or after the 2020 compliance date of standard proposed in this notice. The Department was not able to identify any additional regulatory burdens that met these criteria.

DOE requests comments the cumulative regulatory burden on manufacturers. Specifically, DOE seeks input on any product-specific Federal regulations with which compliance is required within three years of the proposed compliance date for any final pumps standards, as well as on recommendations on how DOE may be able to align varying regulations to mitigate cumulative burden. This matter is identified as Issue 15 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

3. National Impact Analysis

a. Significance of Energy Savings

For each TSL, DOE projected energy savings for pumps purchased in the 30-year period that begins in the year of compliance with new standards (2020–2049). The savings are measured over the entire lifetime of equipment purchased in the 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the base case described in section IV.H.2.

Table V.28 presents the estimated primary energy savings for each considered TSL, and Table V.29 presents the estimated FFC energy savings. The approach is further described in section IV.H.1.

TABLE V.28—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR PUMP TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049

Equipment class	Trial standard level (quads)				
	1	2	3	4	5
ESCC.1800	0.016	0.05	0.08	0.12	0.16
ESCC.3600	0.016	0.07	0.11	0.17	0.26
ESFM.1800	0.003	0.05	0.11	0.23	0.35
ESFM.3600	0.002	0.02	0.03	0.05	0.07
IL.1800	0.015	0.05	0.08	0.11	0.16
IL.3600	0.003	0.01	0.02	0.02	0.03
VTS.3600	0.002	0.02	0.11	0.17	0.22
Total—All Classes	0.056	0.27	0.54	0.87	1.26

Note: Components may not sum to total due to rounding.

TABLE V.29—CUMULATIVE NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR PUMP TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049

Equipment class	Trial standard level (quads)				
	1	2	3	4	5
ESCC.1800	0.017	0.05	0.08	0.12	0.17
ESCC.3600	0.017	0.08	0.12	0.18	0.28
ESFM.1800	0.003	0.06	0.12	0.25	0.37
ESFM.3600	0.002	0.02	0.03	0.05	0.07
IL.1800	0.016	0.05	0.08	0.12	0.17
IL.3600	0.003	0.01	0.02	0.02	0.03
VTS.3600	0.002	0.02	0.11	0.17	0.24
Total—All Classes	0.059	0.28	0.56	0.91	1.32

Note: Components may not sum to total due to rounding.

Circular A–4 requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs.[66] Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine rather than 30 years of equipment shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[67] The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, product manufacturing cycles, or other factors specific to pumps. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES results based on a nine-year analytical period are presented in Table V.30. The impacts are counted over the lifetime of equipment purchased in 2020–2028.

TABLE V.30—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR PUMP TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2028

Equipment class	Trial standard level (quads)				
	1	2	3	4	5
ESCC.1800	0.004	0.013	0.020	0.03	0.04
ESCC.3600	0.004	0.019	0.029	0.04	0.07
ESFM.1800	0.001	0.014	0.030	0.06	0.09
ESFM.3600	0.001	0.004	0.008	0.01	0.02
IL.1800	0.004	0.012	0.020	0.03	0.04
IL.3600	0.001	0.002	0.004	0.01	0.01
VTS.3600	0.001	0.006	0.028	0.04	0.06
Total—All Classes	0.015	0.071	0.141	0.23	0.33

Note: Components may not sum to total due to rounding.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for pumps. In accordance with OMB's guidelines on regulatory analysis,[68] DOE calculated NPV using both a seven-percent and a three-percent real discount rate. Table V.31 shows the consumer NPV results for each TSL considered for pumps. In each case, the impacts cover the lifetime of equipment purchased in 2020–2049.

TABLE V.31—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFIT FOR PUMP TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049

Equipment class	Discount rate (%)	Trial standard level (billion 2013$ *)				
		1	2	3	4	5
ESCC.1800	3	0.052	0.20	0.29	0.40	0.47
	7	0.018	0.07	0.11	0.14	0.15
ESCC.3600	3	0.069	0.34	0.46	0.68	1.06
	7	0.028	0.14	0.18	0.26	0.41
ESFM.1800	3	0.010	0.20	0.44	0.88	1.28
	7	0.003	0.06	0.14	0.27	0.39
ESFM.3600	3	0.009	0.08	0.14	0.20	0.30
	7	0.003	0.03	0.05	0.07	0.11
IL.1800	3	0.063	0.18	0.25	0.28	0.34
	7	0.022	0.06	0.08	0.07	0.07
IL.3600	3	0.011	0.04	0.06	0.08	0.11
	7	0.004	0.01	0.02	0.03	0.04
VTS.3600	3	(0.001)	0.07	0.49	0.71	0.90
	7	(0.002)	0.02	0.20	0.28	0.35
Total—All Classes	3	0.213	1.11	2.13	3.23	4.47
	7	0.077	0.41	0.77	1.13	1.51

* Numbers in parentheses indicate negative NPV.
Note: Components may not sum to total due to rounding.

[66] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[67] EPCA requires DOE to review its standards at least once every six years, and requires, for certain products, a three-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within six years of the compliance date of the previous standards. (42 U.S.C. 6295(m) and 6313(a)(6)(C)) While adding a six-year review to the three-year compliance period adds up to nine years, DOE notes that it may undertake reviews at any time within the six-year period and that the three-year compliance date may yield to the six-year backstop. A nine-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is five years rather than three years.

[68] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4*).

The NPV results based on the aforementioned nine-year analytical period are presented in Table V.32. The impacts are counted over the lifetime of equipment purchased in 2020–2028. As mentioned previously, this information is presented for informational purposes only and is not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.32—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFIT FOR PUMP TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2028

Equipment class	Discount rate (%)	Trial standard level (billion 2013$ *)				
		1	2	3	4	5
ESCC.1800	3	0.017	0.06	0.10	0.13	0.15
	7	0.008	0.03	0.05	0.06	0.07
ESCC.3600	3	0.023	0.11	0.15	0.22	0.35
	7	0.013	0.06	0.08	0.12	0.18
ESFM.1800	3	0.003	0.07	0.14	0.29	0.42
	7	0.002	0.03	0.06	0.12	0.18
ESFM.3600	3	0.003	0.03	0.05	0.07	0.10
	7	0.001	0.01	0.02	0.03	0.05
IL.1800	3	0.021	0.06	0.08	0.09	0.10
	7	0.010	0.03	0.03	0.03	0.03
IL.3600	3	0.004	0.01	0.02	0.03	0.04
	7	0.002	0.01	0.01	0.01	0.02
VTS.3600	3	(0.001)	0.02	0.16	0.23	0.30
	7	(0.001)	0.01	0.09	0.13	0.16
Total—All Classes	3	0.070	0.36	0.70	1.06	1.45
	7	0.035	0.18	0.35	0.51	0.68

* Numbers in parentheses indicate negative NPV.
Note: Components may not sum to total due to rounding.

The results presented in this section reflect an assumption of no change in pump prices over the forecast period. In addition, DOE conducted sensitivity analyses using alternative price trends: One in which prices decline over time, and one in which prices increase. These price trends, and the associated NPV results, are described in appendix 10B of the NOPR TSD.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for pumps to reduce energy costs for equipment owners, with the resulting net savings being redirected to other forms of economic activity. Those shifts in spending and economic activity could affect the demand for labor. As described in section IV.N, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term time frames (2020–2024), where these uncertainties are reduced.

The results suggest that these proposed standards would be likely to have negligible impact on the net demand for labor in the economy. The projected net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents more detailed results about anticipated indirect employment impacts.

4. Impact on Utility or Performance of Equipment

Any technology option expected to lessen the utility or performance of pumps was removed from consideration in the screening analysis. As a result, DOE considered only one design option in this NOPR, hydraulic redesign. This design option does not involve geometry changes affecting installation of the pump (*i.e.,* the flanges that connect it to external piping)—hence, there is no utility difference that might affect use of the more-efficient pumps for replacement applications. Further, the design option would not reduce the acceptable performance envelope of the pump (*e.g.,* the combinations of pressure and flow for which the pump can be operated, restrictions to less corrosive environments, restrictions on acceptable operating temperature range). The hydraulic redesign would affect only the required power input, making no change to pump utility or performance.

DOE seeks comment on the impacts, if any, there would be on the level of utility and available features currently offered by manufacturers with respect to the pumps that would be regulated under this proposal. This matter is identified as Issue 16 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from new standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6313(a)(6)(B)(ii)(V) and 6316(a).)

To assist the Attorney General in making such a determination, DOE will provide DOJ with copies of this notice and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of the equipment subject to this rule is likely to improve the security of the nation's energy system by reducing the overall demand for energy. Reduced electricity demand may also improve the reliability of the electricity system. Reductions in national electric generating capacity estimated for each

considered TSL are reported in chapter 15 of the NOPR TSD.

Energy savings from new standards for the pump equipment classes covered in today's NOPR could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.33 provides DOE's estimate of cumulative emissions reductions projected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The upstream emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL in chapter 13 of the NOPR TSD. As discussed in section IV.L, DOE did not include NO_X emissions reduction from power plants in States subject to CAIR, because an energy conservation standard would not affect the overall level of NO_X emissions in those States due to the emissions caps mandated by CSAPR.

TABLE V.33—CUMULATIVE EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR PUMPS

	TSL				
	1	2	3	4	5
Power Sector Emissions					
CO_2 *(million metric tons)*	3.2	15	31	50	72
SO_2 (*thousand tons*)	2.6	13	25	40	58
NO_X *(thousand tons)*	2.5	12	23	38	55
Hg (*tons*)	0.008	0.039	0.077	0.124	0.180
CH4 (thousand tons)	0.32	1.54	3.07	4.95	7.20
N_2O (*thousand tons*)	0.05	0.22	0.44	0.71	1.03
Upstream Emissions					
CO_2 *(million metric tons)*	0.19	0.91	1.81	2.93	4.26
SO_2 (*thousand tons*)	0.03	0.16	0.32	0.51	0.74
NO_X *(thousand tons)*	2.7	13	26	42	61
Hg (*tons*)	0.0001	0.0004	0.0007	0.0011	0.0016
CH4 (thousand tons)	16	76	151	244	354
N_2O (*thousand tons*)	0.002	0.008	0.016	0.025	0.036
Total Emissions					
CO_2 *(million metric tons)*	3.4	16	33	53	77
SO_2 (*thousand tons*)	2.7	13	25	41	59
NO_X *(thousand tons)*	5.2	25	49	80	116
Hg (*tons*)	0.01	0.04	0.08	0.13	0.18
CH4 (thousand tons)	16	77	154	248	362
N_2O (*thousand tons*)	0.05	0.23	0.45	0.73	1.07

As part of the analysis for this NOPR, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X estimated for each of the TSLs considered for pumps. As discussed in section IV.L, for CO_2, DOE used values for the SCC developed by an interagency process. The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The four SCC values for CO_2 emissions reductions in 2015, expressed in 2013$, are $12.0/ton, $40.5/ton, $62.4/ton, and $119/ton. The values for later years are higher due to increasing emissions-related costs as the magnitude of projected climate change increases.

Table V.34 presents the global value of CO_2 emissions reductions at each TSL. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the NOPR TSD. *See* Section IV. L. for further details.

TABLE V.34—GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR PUMPS

TSL	SCC Scenario * (million 2013$)			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
Power Sector Emissions				
1	21	100	160	310
2	100	474	757	1468
3	199	944	1506	2921
4	319	1517	2421	4695
5	463	2205	3521	6826

TABLE V.34—GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR PUMPS—Continued

TSL	SCC Scenario* (million 2013$)			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
Upstream Emissions				
1	1.2	5.8	9.3	18
2	5.8	28	44	86
3	11	55	88	170
4	18	88	141	274
5	27	129	206	398
Total Emissions				
1	22	106	169	329
2	106	502	801	1554
3	210	999	1594	3092
4	337	1605	2563	4969
5	490	2334	3726	7224

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4 and $119 per metric ton (2013$).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other greenhouse gas (GHG) emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this NOPR the most recent values and analyses resulting from the interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from new standards for the pump equipment that is the subject of this NOPR. The dollar-per-ton values that DOE used are discussed in section IV.L. Table V.35 presents the present value of cumulative NO_X emissions reductions for each TSL calculated using the average dollar-per-ton values and seven-percent and three-percent discount rates.

TABLE V.35—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR PUMPS

TSL	Million 2013$	
	3% Discount rate	7% Discount rate
Power Sector Emissions		
1	3.1	1.4
2	15	6.4
3	29	13
4	47	20
5	68	29
Upstream Emissions		
1	3.3	1.4
2	16	6.4
3	31	13
4	50	20
5	72	30
Total Emissions		
1	6.5	2.8

TABLE V.35—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR PUMPS—Continued

TSL	Million 2013$	
	3% Discount rate	7% Discount rate
2	30	13
3	60	25
4	97	41
5	141	59

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.36 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a seven-percent and a three-percent discount rate. The CO_2 values used in the columns of each table correspond to the four scenarios for the valuation of CO_2 emission reductions discussed above.

TABLE V.36—PUMP TSLS: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 7% discount rate added with: (billion 2013$)			
	SCC Value of $12.0/metric ton CO_2* and medium value for NO_X**	SCC Value of $40.5/metric ton CO_2* and medium value for NO_X**	SCC Value of $62.4/metric ton CO_2* and medium value for NO_X**	SCC Value of $119/metric ton CO_2* and medium value for NO_X**
1	0.2	0.3	0.4	0.5
2	1.2	1.6	1.9	2.7
3	2.4	3.2	3.8	5.3
4	3.7	4.9	5.9	8.3
5	5.1	6.9	8.3	12
	Consumer NPV at 7% discount rate added with: (billion 2013$)			
1	0.1	0.2	0.2	0.4
2	0.5	0.9	1.2	2.0
3	1.0	1.8	2.4	3.9
4	1.5	2.8	3.7	6.1
5	2.1	3.9	5.3	8.8

Note: Parentheses indicate negative values.
* These label values represent the global SCC in 2015, in 2013$. The present values have been calculated with scenario-consistent discount rates.
** Medium Value corresponds to $2,684 per ton of NO_X emissions.

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of equipment shipped in 2020–2049. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of CO_2 in each year. These impacts continue well beyond 2100.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a).) In developing the proposed standard, DOE considered the term sheet of recommendations voted on by the CIP Working Group and approved by the ASRAC. (See EERE–2013–BT–NOC–0039–0092.) DOE has weighed the value of such negotiation in establishing the standards proposed in today's rule. DOE has encouraged the negotiation of proposed standard levels, in accordance with the FACA and the NRA, as a means for interested parties, representing diverse points of view, to analyze and recommend energy conservation standards to DOE. Such negotiations may often expedite the rulemaking process. In addition, standard levels recommended through a negotiation may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

C. Proposed Standards

When considering standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered equipment shall be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a).) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering, to the greatest extent practicable, the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a).) The new or amended standard must also ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and 6316(a).)

For today's NOPR, DOE considered the impacts of new standards for pumps at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next-most-efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader in understanding the benefits and/or burdens of each TSL, tables in this section summarize the quantitative analytical results for each TSL, based on the assumptions and methodology discussed herein. The efficiency levels contained in each TSL are described in section V.A. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard, and impacts on employment. Section V.B.1.b presents the estimated impacts of each TSL for these subgroups. DOE discusses the impacts on direct employment in pump manufacturing in section V.B.2.b, and the indirect employment impacts in section V.B.3.c.

1. Benefits and Burdens of Trial Standard Levels Considered for Pumps

Table V.37, Table V.38, and Table V.39 summarize the quantitative impacts estimated for each TSL for pumps. The national impacts are measured over the lifetime of pumps purchased in the 30-year period that begins in the year of compliance with new standards (2020–2049). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results.

TABLE V.37—SUMMARY OF ANALYTICAL RESULTS FOR PUMPS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
National FFC Energy Savings *(quads)*.	0.059	0.28	0.56	0.91	1.32.
NPV of Consumer Benefits (2013$ billion)					
3% discount rate	0.213	1.11	2.13	3.23	4.47.
7% discount rate	0.077	0.41	0.77	1.13	1.51.
Cumulative FFC Emissions Reduction					
CO_2 *(million metric tons)*.	3.4	16	33	53	77.
SO_2 (*thousand tons*)	2.7	13	25	41	59.
NO_X *(thousand tons)*	5.2	25	49	80	116.
Hg (*tons)*	0.01	0.04	0.08	0.13	0.18.
CH_4 (*thousand tons*)	16	77	154	248	362.
N_2O (*thousand tons*)	0.05	0.23	0.45	0.73	1.07.
Value of Emissions Reduction					
CO_2 (2013$ million)*	22 to 329	106 to 1554	210 to 3092	337 to 4969	490 to 7224.
NO_X—3% discount rate (*2013$ million*).	6.5	30	60	97	141.
NO_X—7% discount rate (*2013$ million*).	2.8	13	25	41	59.

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
Note: Parentheses indicate negative values.

TABLE V.38—NPV OF CONSUMER BENEFITS BY EQUIPMENT CLASS

Equipment class	Discount rate (%)	Trial standard level (billion 2013$ *)				
		1	2	3	4	5
ESCC.1800	3	0.052	0.20	0.29	0.40	0.47
	7	0.018	0.07	0.11	0.14	0.15
ESCC.3600	3	0.069	0.34	0.46	0.68	1.06
	7	0.028	0.14	0.18	0.26	0.41
ESFM.1800	3	0.010	0.20	0.44	0.88	1.28
	7	0.003	0.06	0.14	0.27	0.39
ESFM.3600	3	0.009	0.08	0.14	0.20	0.30
	7	0.003	0.03	0.05	0.07	0.11
IL.1800	3	0.063	0.18	0.25	0.28	0.34
	7	0.022	0.06	0.08	0.07	0.07
IL.3600	3	0.011	0.04	0.06	0.08	0.11
	7	0.004	0.01	0.02	0.03	0.04
VTS.3600	3	(0.001)	0.07	0.49	0.71	0.90
	7	(0.002)	0.02	0.20	0.28	0.35
Total—All Classes	3	0.213	1.11	2.13	3.23	4.47
	7	0.077	0.41	0.77	1.13	1.51

* Numbers in parentheses indicate negative NPV.
Note: Components may not sum to total due to rounding.

TABLE V.39—SUMMARY OF ANALYTICAL RESULTS FOR PUMPS: MANUFACTURER AND CONSUMER IMPACTS

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts					
Industry NPV relative to a base case value of 121.4 (2013$ millions).	111.6 to 121.8	81.9 to 129.7	22.4 to 125.3	(85.0) to 114.1	(228.4) to 94.1.
Industry NPV (% change).	(8.0) to 0.3	(32.5) to 6.9	(81.6) to 3.3	(170.0) to (6.0)	(288.2) to (22.5).
Consumer Mean LCC Savings (2013$)					
ESCC.1800	$43	$164	$240	$324	$362.

TABLE V.39—SUMMARY OF ANALYTICAL RESULTS FOR PUMPS: MANUFACTURER AND CONSUMER IMPACTS—Continued

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC.3600	$17	$92	$122	$180	$278.
ESFM.1800	$8.0	$173	$372	$735	$1,062.
ESFM.3600	$58	$547	$961	$1,411	$2,078.
IL.1800	$51	$149	$200	$202	$234.
IL.3600	$46	$139	$241	$288	$377.
VTS.3600	($2.4)	$7.2	$91	$123	$144.
Consumer Simple PBP (years)					
ESCC.1800	3.3	2.2	2.6	3.1	3.9.
ESCC.3600	1.4	1.0	1.8	1.9	1.9.
ESFM.1800	2.4	2.8	2.8	3.1	3.4.
ESFM.3600	1.2	0.8	0.9	1.1	1.2.
IL.1800	2.3	2.8	3.9	5.4	6.1.
IL.3600	1.4	1.9	2.1	2.7	3.2.
VTS.3600	11	4.2	1.7	2.2	2.7.
Percent Consumers with Net Cost (%)					
ESCC.1800	12	11	23	30	42.
ESCC.3600	0.7	1.8	14	14	12.
ESFM.1800	0.26	6.5	15	24	26.
ESFM.3600	0.29	1.9	4.7	7.0	8.4.
IL.1800	1.8	6.9	15	25	36.
IL.3600	2.0	13	11	14	20.
VTS.3600	1.4	21	4.4	8.5	13

Note: Parentheses indicate negative values.

First, DOE considered TSL 5, which would save an estimated total of 1.32 quads of energy, an amount DOE considers significant. TSL 5 has an estimated NPV of consumer benefit of $1.51 billion using a 7-percent discount rate, and $4.47 billion using a 3-percent discount rate. The cumulative emissions reductions at TSL 5 are 77 million metric tons of CO_2, 116 thousand tons of NO_X, and 0.18 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $490 million to $7,224 million. At TSL 5, the average LCC savings ranges from $144 to $2,078 depending on equipment class. The fraction of consumers with negative LCC benefits range from 8.4 percent to 42 percent depending on equipment class. At TSL 5, the projected change in INPV ranges from a decrease of $349.8 million to a decrease of $27.3 million. At TSL 5, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the lower bound of the range of impacts is reached TSL 5 could result in a net loss of up to 288.2 percent in INPV for manufacturers.

Accordingly, the Secretary tentatively concludes that, at TSL 5 for pumps, the benefits of energy savings, national net present value of consumer benefit, LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the fraction of consumers with negative LCC benefits and the significant burden on the industry. Consequently, DOE has concluded that TSL 5 is not economically justified.

Next, DOE considered TSL 4, which would save an estimated total of 0.91 quads of energy, an amount DOE considers significant. TSL 4 has an estimated NPV of consumer benefit of $1.13 billion using a 7-percent discount rate, and $3.23 billion using a 3-percent discount rate. The cumulative emissions reductions at TSL 4 are 53 million metric tons of CO_2, 80 thousand tons of NO_X, and 0.13 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $337 million to $4,969 million. At TSL 4, the average LCC savings ranges from $123 to $1,411 depending on equipment class. The fraction of consumers with negative LCC benefits range from 7.0 percent to 30 percent depending on equipment class. At TSL 4, the projected change in INPV ranges from a decrease of $206.3 million to a decrease of $7.2 million. At TSL 4, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the lower bound of the range of impacts is reached TSL 4 could result in a net loss of up to 170 percent in INPV for manufacturers.

Accordingly, the Secretary tentatively concludes that at TSL 4 for pumps, the benefits of energy savings, national net present value of consumer benefit, LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the fraction of consumers with negative LCC benefits and the significant burden on the industry. Consequently, DOE has concluded that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which would save an estimated total of 0.56 quads of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of consumer benefit of $0.77 billion using a 7-percent discount rate, and $2.13 billion using a 3-percent discount rate. The cumulative emissions reductions at TSL 3 are 33 million metric tons of CO_2, 49 thousand tons of NO_X, and 0.08 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $210 million to $3,092 million. At TSL 3, the average LCC savings are range from $91 to $961 depending on equipment class. The fraction of consumers with negative LCC benefits ranged from 4.4 percent to 23 percent depending on equipment class. At TSL 3, the projected change in INPV ranges from a decrease of $99 million to an increase of $4 million. If the lower bound of the range of impacts is reached, TSL 3 could result in a net loss of up to 81.6 percent in INPV for manufacturers.

Accordingly, the Secretary tentatively concludes that at TSL 3 for pumps, the benefits of energy savings, national net

present value of consumer benefit, LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the fraction of consumers with negative LCC benefits and the significant burden on the industry. Consequently, DOE has concluded that TSL 3 is not economically justified.

Next, DOE considered TSL 2, which would save an estimated total of 0.28 quads of energy, an amount DOE considers significant. TSL 2 has an estimated NPV of consumer benefit of $0.41 billion using a 7-percent discount rate, and $1.11 billion using a 3-percent discount rate. The cumulative emissions reductions at TSL 2 are 16 million metric tons of CO_2, 25 thousand tons of NO_X, and 0.04 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $106 million to $1,554 million. At TSL 2, the average LCC savings range from $7.2 to $547 depending on equipment class. The fraction of consumers with negative LCC benefits range from 1.8 percent to 21 percent depending on equipment class. At TSL 2, the projected change in INPV ranges from a decrease of $39.5 million to an increase of $8.3 million. If the lower bound of the range of impacts is reached, TSL 2 could result in a net loss of up to 32.5 percent in INPV for manufacturers.

After considering the analysis and weighing the benefits and the burdens, DOE has tentatively concluded that at TSL 2 for pumps, the benefits of energy savings, positive NPV of consumer benefit, positive average consumer LCC savings, emission reductions, and the estimated monetary value of the emissions reductions would outweigh the fraction of consumers with negative LCC benefits and the potential reduction in INPV for manufacturers.

In addition, the proposed standards are consistent with the recommendations voted on by the CIP Working Group and approved by the ASRAC. (See EERE–2013–BT–NOC–0039–0092.) DOE has encouraged the negotiation of proposed standard levels, in accordance with the FACA and the NRA, as a means for interested parties, representing diverse points of view, to analyze and recommend energy conservation standards to DOE. Such negotiations may often expedite the rulemaking process. In addition, standard levels recommended through a negotiation may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

The Secretary of Energy has tentatively concluded that TSL 2 would save a significant amount of energy and is technologically feasible and economically justified. For the above reasons, DOE today proposes to adopt the energy conservation standards for pumps at TSL 2. Table V.40 presents the proposed energy conservation standards for pumps.

TABLE V.40—PROPOSED ENERGY CONSERVATION STANDARDS FOR PUMPS

Equipment class	Proposed standard level *	Proposed C-value
ESCC.1800.CL	1.00	128.47
ESCC.3600.CL	1.00	130.42
ESCC.1800.VL	1.00	128.47
ESCC.3600.VL	1.00	130.42
ESFM.1800.CL	1.00	128.85
ESFM.3600.CL	1.00	130.99
ESFM.1800.VL	1.00	128.85
ESFM.3600.VL	1.00	130.99
IL.1800.CL	1.00	129.30
IL.3600.CL	1.00	133.84
IL.1800.VL	1.00	129.30
IL.3600.VL	1.00	133.84
RSV.1800.CL	1.00	129.63
RSV.3600.CL	1.00	133.20
RSV.1800.VL	1.00	129.63
RSV.3600.VL	1.00	133.20
VTS.1800.CL	1.00	134.13
VTS.3600.CL	1.00	134.13
VTS.1800.VL	1.00	134.13
VTS.3600.VL	1.00	134.13

* A pump model is compliant if its PEI rating is less than or equal to the proposed standard.

2. Summary of Benefits and Costs (Annualized) of the Proposed Standards

The benefits and costs of today's proposed standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value, expressed in 2013$, of the benefits from operating equipment that meets the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[69] The value of the CO_2 reductions (*i.e.,* SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process. See section IV.L.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of equipment shipped in 2020–2049. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of CO_2 in each year. These impacts continue well beyond 2100.

Table V.41 shows the annualized values for the proposed standards for pumps. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.5/t in 2015, the cost of the standards proposed in this document is $16.9 million per year in increased equipment costs, while the benefits are $60 million per year in reduced equipment operating costs, $29 million in CO_2 reductions, and $1.3 million in reduced NO_X emissions. In this case, the net benefit amounts to $73 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.5/t in 2015, the cost of the standards proposed in this document is $17.5 million per year in increased equipment costs, while the benefits are $81 million per year in reduced operating costs, $29 million in CO_2 reductions, and $1.7 million in reduced NO_X emissions. In this case, the net benefit amounts to $94 million per year.

[69] For the annualization methodology, see footnote 13.

TABLE V.41—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 2) FOR PUMPS

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Operating Cost Savings	7	60	54	67
	3	81	72	93
CO_2 Reduction Monetized Value ($12.0/t case) **	5	8	8	9
CO_2 Reduction Monetized Value ($40.5/t case) **	3	29	27	31
CO_2 Reduction Monetized Value ($62.4/t case) **	2.5	42	39	46
CO_2 Reduction Monetized Value $119/t case) **	3	89	83	97
NO_X Reduction at $2,684/ton **	7	1.3	1.3	1.4
	7 plus CO_2 range	1.3	1.6	1.9
Total Benefits †	7 plus CO_2 range	69 to 150	63 to 138	78 to 166
	7	90	82	100
	3 plus CO_2 range	91 to 172	81 to 156	104 to 192
	3	112	100	126
Costs				
Incremental Equipment Costs	7	16.9	18.6	17.2
	3	17.5	19.5	17.7
Net Benefits/Costs				
Total†	7 plus CO_2 range	53 to 133	44 to 119	61 to 148
	7	73	63	83
	3 plus CO_2 range	74 to 155	62 to 136	86 to 174
	3	94	80	108

* This table presents the annualized costs and benefits associated with pumps shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2014* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental equipment costs reflect a constant rate in the Primary Estimate, an increase rate in the Low Benefits Estimate, and a decline rate in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.2.a.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with 3-percent discount rate ($40.5/t case). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Labeling and Certification Requirements

A. Labeling

In the Framework Document, DOE noted that EPCA includes provisions for labeling (42 U.S.C. 6315). EPCA authorizes DOE to establish labeling requirements only if certain criteria are met. Specifically, DOE must determine that: (1) Labeling in accordance with section 6315 is technologically and economically feasible with respect to any particular equipment class; (2) significant energy savings will likely result from such labeling; and (3) labeling in accordance with section 6315 is likely to assist consumers in making purchasing decisions. (42 U.S.C. 6315(h)).

If these criteria are met, EPCA specifies certain aspects of equipment labeling that DOE must consider in any rulemaking establishing labeling requirements for covered equipment. At a minimum, such labels must include the energy efficiency of the affected equipment, as tested under the prescribed DOE test procedure. The labeling provisions may also consider the addition of other requirements, including: Directions for the display of the label; a requirement to display on the label additional information related to energy efficiency or energy consumption, which may include instructions for maintenance and repair of the covered equipment, as necessary to provide adequate information to purchasers; and requirements that printed matter displayed or distributed with the equipment at the point of sale also include the information required to be placed on the label. (42 U.S.C. 6315(b) and 42 U.S.C. 6315(c)).

In response to the Framework document, HI and Grundfos supported labeling that would include the rated efficiency value of the pump. (HI, No. 25 at p. 11; Grundfos, No. 24 at p. 19). Grundfos noted that this would provide transparency to consumers to make better purchasing considerations and would not be expected to result in significant additional burden. Grundfos added that markings should not conflict with other information presently included on nameplates, that additional bossing on the pump castings should not be required, but that potentially Energy Guide-type labels could be placed on pump packaging prior to shipping. Grundfos also recommended harmonization with EU 547. (Grundfos, No. 24 at p. 19). HI noted that including efficiency on the label would allow the buyer or end-user to select the most efficient product available. (HI, No. 25 at p. 11). The Advocates also noted that development of a DOE test procedure for pumps including motors could facilitate a labeling scheme to encourage the greater use of pumps with VSDs across a wide horsepower range. (The Advocates, No. 32 at p. 7).

The CIP Working Group recommended labeling requirements in the term sheet. (See EERE–2013–BT–NOC–0039–0092, recommendation #12.) Specifically, the working group recommended that pumps be labeled based on the configuration in which they are sold. Table VI.1 shows the information that the CIP Working Group recommended be included on a pump nameplate. (See EERE–2013–BT–NOC–0039–0092, recommendation #12.)

TABLE VI.1—LABELING REQUIREMENTS FOR PUMP NAMEPLATE

Bare pump	Bare pump + motor	Bare pump + motor + controls
PEI_{CL}	PEI_{CL}	PEI_{CL}.
Model number	Model number	Model number.
Impeller diameter for each unit	Impeller diameter for each unit	Impeller diameter for each unit.

Note: The impeller diameter referenced is the actual diameter of each unit as sold, not the full impeller diameter at which the pump is rated.

DOE has reviewed the recommendations of the working group with respect to the three requirements in EPCA restricting the Secretary's authority to promulgate labeling rules. (42 U.S.C. 6315(h)). DOE considered applying these requirements to both the pump nameplate and marketing materials.

First, DOE finds that the working group labeling recommendations are technologically and economically feasible with respect to each equipment class in this rulemaking. Pump manufacturers currently include nameplates on their pumps and it is technologically feasible for them to provide energy efficiency information on a nameplate as well without presenting a significant incremental burden. Furthermore, as the additional information proposed to be added to the nameplate is minimal and, in some cases, may already be included on the nameplate of some pump manufacturers, DOE believes that the size of the nameplate typically will not be required to increase and, thus, there will not be an incremental cost for adding additional information to pump nameplates.[70] Costs of updating marketing materials for pumps that must be redesigned to meet the standard were included in the conversion costs for the industry and are accounted for in the industry cash-flow analysis results and industry valuation figures in section V.B.2. For pumps that do not need to be redesigned to meet the standard, DOE estimates that the costs of updating marketing materials to include the labeling requirements would be up to $3750 per pump model.[71] In the absence of a standard, this would result in additional cost to the industry of approximately $13 million. DOE estimates that the investment could result in a loss of INPV compared to a base case with no labeling requirement of up to approximately 5%. For the proposed standard, the additional cost to industry for updating marketing materials for pumps that do not have to be redesigned would be approximately $10 million. DOE estimates that the investment could result in an additional loss of INPV compared to a base case with no labeling requirement of up to approximately 4% beyond that estimated from the proposed standard.[72] Therefore, DOE has determined that establishing labeling requirements would be economically feasible.

Second, DOE believes the labeling recommendations proposed by the working group will likely result in significant energy savings. The related energy conservation standards are expected to save 0.27 quads. Requiring labels that include the rated value subject to the standards will increase consumer awareness of the standards. As a result, requiring the labels may increase consumer demand for more efficient pumps, thus leading to additional savings beyond that calculated for the standards. In addition, the labels will make it easier for consumers to compare the expected performance of a bare pump to that of a pump with controls, thus increasing the likelihood that a consumer will select a pump with controls. Such purchasing decisions will result in additional energy savings beyond that of the standard by potentially increasing the market share of pumps sold with controls and therefore using less power during operating hours.

Third, DOE finds that the recommended working group labeling requirements are likely to assist consumers in making purchasing decisions. By including the rated metric on the nameplate and marketing materials, consumers will have the information needed to compare performance between pump models, with the assurance that the ratings were calculated according to a DOE-specified test procedure. As stated previously, the labeling recommendations will assist consumers in making purchasing decisions between bare pumps and pumps with controls, by allowing them to fairly accurately estimate the potential energy savings from using controls in a variable load situation. As noted previously, Grundfos and HI both suggested in comments that labels would assist consumers in making purchasing decisions. (Grundfos, No. 24 at p. 19; HI, No. 25 at p. 11). This was also a primary reason the recommendation was made by the working group.

DOE also notes that the recommended working group labeling recommendations meet the EPCA requirement that labels, at a minimum, include the energy efficiency of the equipment to which the rulemaking applies, as tested under the prescribed DOE test procedure. (42 U.S.C. 6315(b)). In this case, that information is PEI_{CL} or PEI_{VL}, depending on pump configuration. Therefore, DOE is proposing to adopt the labeling requirements recommended by the CIP Working Group, as shown in Table VI.1. Additionally, DOE proposes that these same labeling requirements be applied

[70] Manufacturers will likely deplete their stock of existing nameplates prior to the compliance date of any labeling requirements. Therefore, in order to meet the labeling requirements, they will be buying redesigned nameplates—likely at the same cost as the old ones—and then printing new information on them—likely at the same cost as previously.

[71] HI estimated the average cost for updating marketing (literature, data sheets, curves, pump selection tools, sales training, compliance documentation, etc.) for a hydraulic redesign to range from $32,000 for a 1-hp model to $27,000 for a 200-hp model. DOE assumed $30,000 on average. The marketing costs provided by HI were for developing new materials for redesigned pump models. For this exercise only literature and data sheets are relevant, which DOE estimated would represent half of the marketing costs. In addition, in this case, DOE is estimating the incremental cost for making a few additions to literature rather than complete design of new materials. DOE assumed these additions would cost only 25% or less of full material development.

[72] Approximately 3500 models are in the scope of this rulemaking. In the absence of the standard, none of these models would have to be redesigned and would thus incur $3750 each in costs for updating marketing materials. At TSL 2, 25% of pump models would have to be redesigned, and creating new marketing materials for these pumps is already accounted for in the MIA. The 75% of pump models that do not have to be redesigned would incur $3750 each.

to marketing materials in addition to the pump nameplate. See 42 U.S.C. 6315(c)(3).

DOE is tentatively proposing the following requirements for display of information: All orientation, spacing, type sizes, type faces, and line widths to display this required information shall be the same as or similar to the display of the other performance data on the pump's permanent nameplate. The PEI_{CL} or PEI_{VL}, as appropriate to a given pump model, shall be identified in the form ''PEI_{CL} ___'' or ''PEI_{VL} ___.'' The model number shall be in one of the following forms: ''Model ____'' or ''Model number ____'' or ''Model No. ____.'' The unit's impeller diameter shall be in the form ''Imp. Dia. ____(in.).'' DOE seeks input on these proposed requirements. This is identified as Issue 17 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

DOE is aware that when pump manufacturers sell a bare pump to a distributor, the distributor may trim the impeller prior to selling the pump to a customer. Therefore, DOE requests comment on the feasibility of including the impeller diameter for each unit on the nameplate. Specifically, when shipping bare pumps to distributors, would it be more appropriate for this field to be left blank and filled in by the distributor? This is identified as Issue 18 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

B. Certification Requirements

1. Certification Report Requirements

Since pumps are a distinct type of covered equipment under EPCA and would have entirely separate reporting requirements from other types of covered equipment, DOE proposes to include the reporting requirements in a new section 429.59 within subpart B of 10 CFR part 429. This section would also include sampling requirements, which are discussed in the test procedure NOPR. Consistent with other types of covered products and equipment, the proposed section (10 CFR 429.59) would specify that the general certification report requirements contained in 10 CFR 429.12 apply to pumps. Proposed additional requirements established in 10 CFR 429.59 would require manufacturers to supply certain additional information to DOE in certification reports for pumps to demonstrate compliance with any energy conservation standards established as a result of this rulemaking.

The CIP Working Group recommended that the following data be included in the certification reports:

- Manufacturer name;
- Model number(s);
- Equipment class;
- PEI_{CL} or PEI_{VL} as applicable;
- BEP flow rate and head;
- Rated speed;
- Number of stages tested;
- Full impeller diameter (in.);
- Whether the PEI_{CL} or PEI_{VL} is calculated or tested; and
- Input power to the pump at each load point *i* (P^{in}_i).

(See EERE–2013–BT–NOC–0039–0092, recommendation No. 13.)

DOE has reviewed the working group recommendations and made some modifications and additions. DOE is proposing that the following recommended items be required in certification reports without modifications:

- Manufacturer name;
- Model number(s);
- Equipment class;
- PEI_{CL} or PEI_{VL} as applicable;
- Number of stages tested;
- Full impeller diameter (in.); and
- Whether the PEI_{CL} or PEI_{VL} is calculated or tested.

DOE is proposing that the following recommended items be required in certification reports with modifications for clarity relating to units and operating conditions:

- BEP flow rate in gallons per minute (gpm) and head in feet when operating at nominal speed;
- Rated (tested) speed in revolutions per minute (rpm) at the BEP of the pump; and
- Driver power input at each required load point *i* (P^{in}_i), corrected to nominal speed, in horsepower (hp).

DOE is proposing that the following additional items be required in certification reports to assist with verification:

- Nominal speed for certification in revolutions per minute (rpm)—
  - Required to verify equipment class as well as calculations for parameters that must be corrected to nominal speed;
- The configuration in which the pump is being rated (*i.e.,* bare pump, a pump sold with a motor, or a pump sold with a motor and continuous or non-continuous controls)—
  - Necessary for DOE to determine appropriate test procedure method to follow when verifying ratings; and
- For pumps sold with electric motors regulated by DOE's energy conservation standards for electric motors at § 431.25 other single-phase induction motors (with or without controls): Motor horsepower (hp) and nominal motor efficiency, in percent (%)—
  - Necessary for DOE to complete calculations in test procedure when verifying ratings.

Finally, DOE is proposing that PER_{CL} or PER_{VL}, as applicable, and pump efficiency at BEP be required in certification reports in order to provide additional performance information to assist with future regulatory efforts or utility programs related to pumps.

DOE requests comment on modifications or additions to the proposed reporting requirements for certification of pumps. DOE requests comment on whether pump efficiency at BEP should be required to be included in the certification reports. This is identified as Issue 19 in section VIII.E, ''Issues on Which DOE Seeks Comment.''

2. Definition of Manufacturer

In 10 CFR part 431, regarding the energy efficiency program for certain commercial and industrial equipment, manufacturer is defined in section 431.2 as ''any person who manufactures industrial equipment, including any manufacturer of a commercial packaged boiler.'' In addition, manufacture means ''to manufacture, produce, assemble, or import.''

In response to the Framework Document, the CA IOUs and the Advocates suggested that DOE define ''manufacturer'' more broadly such that distributors who package pumps with motors for sale would be subject to the standards. (CA IOUs, No. 26 at p. 3; The Advocates, No. 32 at pp. 6–7.) The Advocates added that it would support OEMs being subject to standards, but would not support contractors or installers to be considered ''manufacturers.'' (Id.)

Earthjustice noted that based on the definitions in EPCA, if a standard applies to pump/motor combinations, connecting or packaging a motor and pump would ordinarily count as manufacturing the combined product. (Earthjustice, No. 30 at p. 2.) It also added that contractors or installers would not be covered. (Id.)

On the other hand, AHRI recommended that if DOE establishes a regulatory regime that includes pump packages with VSDs, that pump manufacturers manage compliance of the extended product and that separately sold VFDs remain outside of DOE's authority. (AHRI, No. 28 at p. 2.)

The CIP Working Group also discussed the definition of manufacturer on several occasions. (See EERE–2013–BT–NOC–0039–0014, pp. 32–33, pp. 39–57, and pp. 79–82; EERE–2013–BT–NOC–0039–0015, pp. 134, 203–223; EERE–2013–BT–NOC–0039–0062, pp.

316–327; and EERE–2013–BT–NOC–0039–0106, pp. 174–176)

DOE has reviewed the comments and notes that it has already proposed a definition that would apply when determining which entity constitutes the pump manufacturer in a separate rulemaking. DOE refers readers to its proposed test procedure for pumps. Today's proposal would, however, detail the requirements that a pump manufacturer would need to meet when certifying a given pump as compliant with any energy conservation standards that DOE may adopt. These provisions, which would be part of 10 CFR part 429, would detail the general and product-specific information relating to each basic model of pump that a manufacturer must submit to the Department as part of the certification and compliance report.

C. Enforcement Provisions

DOE has reviewed the enforcement provisions specified in subpart C of 10 CFR part 429 and is proposing that they are appropriate and sufficient for pumps. DOE is proposing a single modification to specify that § 429.110(e)(ii) on enforcement testing would apply to pumps as well as the already listed equipment.

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, Oct. 4, 1993, requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that today's standards address are as follows:

(1) The cost of gathering relevant information and difficulties in analyzing it leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of pumps that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection, and national security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming.

In addition, DOE has determined that today's regulatory action is an ''economically significant regulatory action'' under Executive Order 12866. DOE presented to the Office of Information and Regulatory Affairs (OIRA), which is part of OMB, a copy of the draft rule for review along with other documents prepared for this rulemaking, including a regulatory impact analysis (RIA). These documents are part of the rulemaking docket. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011.) EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of a regulatory flexibility analysis (RFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461, August 16, 2002, DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of pumps, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848, May 15, 2000, as amended at 65 FR 53533, 53544, Sept. 5, 2000, and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/small-business-size-standards*. Manufacturing of pumps is classified under NAICS 333911, ''Pump and Pumping Equipment Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

1. Description and Estimated Number of Small Entities Regulated

To estimate the number of small business manufacturers of equipment covered by this rulemaking, DOE

conducted a market survey using available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including HI), industry conference exhibitor lists, individual company and buyer guide Web sites, and market research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture products covered by this rulemaking. DOE presented its list to manufacturers in MIA interviews and asked industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly-available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of pumps that would be regulated by the proposed standards. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 86 manufacturers of covered pump products sold in the U.S. Thirty- eight of these manufacturers met the 500-employee threshold defined by the SBA to qualify as a small business, but only 25 were domestic companies. DOE notes that manufacturers interviewed stated that there are potentially a large number of small pumps manufacturers that serve small regional markets. These unidentified small manufacturers are not members of HI and typically have a limited marketing presence. The interviewed manufacturers and CIP Working Group participants were not able to name these smaller players. Based on this information, it is possible that DOE's list of 25 small domestic players may not include all small U.S. manufacturers in the industry. DOE requests comment on the number and names of small manufacturers producing covered equipment.

Before issuing this NOPR, DOE interviewed two small business manufacturers of pumps. DOE also obtained qualitative information about small business impacts while interviewing large manufacturers. Specifically, DOE discussed with large manufacturers the extent to which new standards might require small businesses to acquire new equipment or cause manufacturing process changes that could destabilize their business. Responses given by larger manufacturers supported and informed DOE's description and estimate of compliance requirements, which are presented in section VII.B.2. In general, DOE found very little information in the public domain about the role of small manufacturers in this industry.

Today's proposed standards reflect the recommendation of the CIP Working Group, which consisted of 16 members, including one small manufacturer. DOE selected the 16 members of the working group after issuing a notice of intent to establish a CIP Working Group (78 FR 44036) and receiving 19 nominations for membership. DOE notes that the three nominated parties who were not selected for the working group did not represent small businesses. Prior to the formation of the CIP Working Group, DOE issued an RFI (76 FR 34192), a Framework Document (78 FR 7304), and held a public meeting on February 20, 2013, to discuss the Framework Document in detail—all of which publicly laid out DOE's efforts to set out standards for pumps. The leading industry trade association, HI, was engaged in each of these stages and helped spread awareness of the rulemaking process to all of its members, which includes both small and large manufacturers.[73]

DOE requests additional information on the number of small businesses in the industry, the names of those small businesses, and their role in the market. This matter is identified as Issue 20 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

DOE made key assumptions about the market share and product offerings of small manufacturers in its analysis. Specifically, DOE estimated that small manufacturers accounted for approximately 36% of the total industry model offerings.

DOE requests data on the market share of small manufacturers and on the number of model offerings from small manufacturers. This matter is identified as Issue 21 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

2. Description and Estimate of Compliance Requirements

At TSL 2, the level proposed in today's notice, DOE estimates total conversion costs of $0.8 million for an average small manufacturer, compared to total conversion costs of $1.4 million for an average large manufacturer. DOE notes that it estimates a lower total conversion cost for small manufacturers, because of the previous assumption that small manufacturers offer fewer models than their larger competitors, which means small manufacturers would likely have fewer product models to redesign. DOE's conversion cost estimates were based on industry data collected by HI (see section IV.C.5 for more information on the derivation of industry conversion costs). DOE applied the same per-model product conversion costs for both large and small manufacturers. DOE requests comment on the difference in the per-model redesign costs between small and large manufacturers. Table VI.1 below shows the relative impacts of conversion costs on small manufacturers relative to large manufacturers.

DOE requests data on the cost of hydraulic redesigns for a small manufacturer. This matter is identified as Issue 22 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

TABLE VII.1—IMPACTS OF CONVERSION COSTS ON A SMALL MANUFACTURER AT THE PROPOSED STANDARD

	Capital conversion cost as a percentage of annual capital expenditures	Product conversion cost as a percentage of annual R&D expense	Total conversion cost as a percentage of annual revenue	Total conversion cost as a percentage of annual EBIT
Average Large Manufacturer	303	1579	32	582
Average Small Manufacturer	374	1013	25	464

[73] HI membership includes 48 manufacturers of product within the scope of this rulemaking, of which 10 are small domestic manufacturers.

The total conversion costs are approximately 25% of revenue and 464% of earnings before interest and tax (EBIT) for a small manufacturer. For large manufacturers, the total conversion costs are approximately 32% of revenue and 582% of EBIT. These initial findings indicate that small manufacturers face conversion costs that are proportionate relative to larger competitors.

However, as noted in section V.B.2.a, the GRIM free cash flow results in 2019 indicated that some manufacturers may need to access the capital markets in order to fund conversion costs directly related to the proposed standard. Given that small manufacturers have greater difficulty securing outside capital [74] and that the necessary conversion costs are not insignificant to the size of a small business, it is possible the small manufacturers will be forced to retire a greater portion of product models than large competitors. Also, smaller companies often have a higher cost of borrowing due to higher risk on the part of investors, largely attributed to lower cash flows and lower per unit profitability. In these cases, small manufacturers may observe higher costs of debt than larger manufacturers.

Though conversion costs are similar in magnitude for small and large manufacturers, small manufacturers may not have the same resources to make the required conversions. For example, some small pump manufacturers may not have the technical expertise to perform hydraulic redesigns in-house. These small manufacturers would need to hire outside consultants to support their re-design efforts. This could be a disadvantage relative to companies that have internal resources and personnel for the redesign process.

DOE requests data on the cost of capital for small manufacturers to better quantify how small manufacturers might be disadvantaged relative to large competitors. DOE also invites comment on DOE's calculations in Table VII.1, which show that the relative impact of conversion costs on the average small business, as estimated as a percentage of annual research and development expenses and total revenue, would be less than the impact felt by average large manufacturer. This matter is identified as Issue 23 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

[74] Simon, Ruth, and Angus Loten, ''Small-Business Lending Is Slow to Recover,'' *Wall Street Journal,* August 14, 2014. Accessed August 2014, available at *http://online.wsj.com/articles/small-business-lending-is-slow-to-recover-1408329562.*

DOE requests comment and data on the impact of the proposed standard on small business manufacturers. This matter is identified as Issue 24 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of this NOPR.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is unaware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

4. Significant Alternatives to the Rule

The primary alternatives to the proposed rule are the other TSLs besides the one being considered today, TSL 2. DOE explicitly considered the role of manufacturers, including small manufacturers, in its selection of TSL 2 rather than TSLs 3, 4, or 5. With respect to TSL 5, DOE estimated that while there would be significant consumer benefits stemming from the projected energy savings of 1.32 quads (ranging from $1.51 billion using a 7% discount rate to $4.47 using a 3% discount rate) along with emissions reductions, the overall impacts would yield over a 288 percent drop in INPV, which would create negative LCC benefits and a significant burden on the industry that outweighed the potential benefits at TSL 5. Similarly, with respect to TSL 4, DOE projected that in spite of the 0.91 quads of energy savings (and accompanying consumer benefits ranging from $1.13 billion using a 7-percent discount rate to $3.23 billion using a 3-percent discount rate) along with emission reduction benefits, the potential negative impacts on industry—estimated to be as much as a 170 percent drop in INPV—were sufficient to weigh against the adoption of this TSL. Finally, with respect to TSL 3, DOE concluded that the estimated 0.56 quads of energy savings (and accompanying consumer benefits ranging from $0.77 billion using a 7-percent discount rate to $2.13 billion using a 3-percent discount rate) along with emission reduction benefits, the potential negative impacts on industry—a nearly 82 percent drop in INPV—weighed against the adopting this TSL. (Chapter 12 of the NOPR TSD contains additional information about the impact of this rulemaking on manufacturers.) Accordingly, DOE is not adopting any of these alternatives and, instead, is proposing the standards set forth in this rulemaking. (See chapter 17 of the NOPR TSD for further detail on the policy alternatives DOE considered.)

In addition to the other TSLs being considered, chapter 17 of the NOPR TSD and section V.B.7 include reports on a regulatory impact analysis (RIA). For the pumps that would be affected by this rulemaking, the RIA discusses the following policy alternatives: (1) Consumer rebates; (2) consumer tax credits; (3) manufacturer tax credits; (4) voluntary energy efficiency targets; and (5) bulk government purchases. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the standards, DOE determined that the energy savings of these alternatives are significantly smaller than those that would be expected to result from adoption of the proposed standard levels (ranging from approximately 0.2 percent to 78 percent of the primary energy savings from the proposed standards).

DOE notes that if a manufacturer finds that meeting the standard for pumps would cause special hardship, inequity, or unfair distribution of burdens, the manufacturer may petition the Office of Hearings and Appeals (OHA) for exception relief or exemption from the standard pursuant to OHA's authority under section 504 of the DOE Organization Act (42 U.S.C. 7194), as implemented at subpart B of 10 CFR part 1003. OHA has the authority to grant such relief on a case-by-case basis if it determines that a manufacturer has demonstrated that meeting the standard would cause hardship, inequity, or unfair distribution of burdens.

DOE seeks comment and, in particular, data on the impacts of this rulemaking on small businesses. (See Issue 24 under ''Issues on Which DOE Seeks Comment'' in section VIII.E. of this NOPR.)

C. Review Under the Paperwork Reduction Act

In the event that DOE adopts its proposed standards, pump manufacturers would need to certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers would need to test their products according to the applicable DOE test procedures for pumps that DOE may adopt to measure the energy efficiency of this equipment, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including pumps. 76 FR 12422, March 7, 2011. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB

control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The proposed rule fits within the category of actions, because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255, Aug. 10, 1999, imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent and, based on criteria, set forth in EPCA. (42 U.S.C. 6297.) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729, Feb. 7, 1996. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and has determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause 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), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b).) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel*.

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more on the private sector. Specifically, the proposed rule will likely result in a final rule that could require expenditures of $100 million or more. Such expenditures may include: (1) Investment in research and development and in capital expenditures by pump manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency pumps, starting on the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the NOPR and the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. 2 U.S.C. 1535(a). DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule, unless DOE publishes an explanation for doing

otherwise, or the selection of such an alternative is inconsistent with law. As authorized by 42 U.S.C. 6311(1)(A), this proposed rule would establish energy conservation standards that are designed to achieve the maximum improvement in energy efficiency for pumps that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859, Mar. 18, 1988, that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452, Feb. 22, 2002, and DOE's guidelines were published at 67 FR 62446, Oct. 7, 2002. DOE has reviewed today's NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355, May 22, 2001, requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which sets forth energy conservation standards for pumps, is not a significant energy action, because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664, Jan. 14, 2005. The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses, and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html*.

VIII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*.

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

In addition, participants may attend the public meeting via webinar. Webinar registration information,

participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this NOPR. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this NOPR.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, are written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF, or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he

or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, as received and without change, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Whether all RSV models sold in the United States are based on a global platform.

2. Whether there are any pump models that would pass the proposed standard at a nominal speed of 3600 but fail at a nominal speed of 1800 if the same C-values were used for each equipment class.

3. Whether the market distribution channels include all appropriate intermediate steps, and the estimated market share of each channel.

4. Information and data on average annual operating hours for the pump types and applications in the scope of this rulemaking.

5. Information and data on typical load profiles for the pump types and applications in the scope of this rulemaking.

6. The percent of pumps in scope operated by each fuel type other than electricity (*e.g.,* diesel, gasoline, liquid propane gas, or natural gas) and the efficiency or losses of each type of non-electric driver, including transmission losses if any, that would allow DOE to estimate the fuel use and savings of pumps sold with non-electric drivers.

7. The most appropriate trend to use for real (inflation-adjust) pump prices.

8. Whether any of the efficiency levels considered in this NOPR might lead to an increase in installation costs, and if so, data regarding the magnitude of the increased cost for each relevant efficiency level.

9. DOE seeks comment on whether new standards would be likely to affect shipments.

10. The penetration rate of VFDs relative to the scope of this rulemaking, the average power reduction from use of a VFD, the ''effectiveness rate'' of a VFD, the percent of shipments with trimmed impellers, and the average percent impeller trim.

11. Whether a rebound effect should be included in the determination of annual energy savings and, if so, data to assist in calculation of the rebound effect.

12. DOE requests comment on the capital conversion costs and product conversion costs estimated for each TSL.

13. DOE requests comment on the potential impacts on manufacturer employment and the specific drivers of any expected change in production line employment.

14. DOE requests comments and data on capacity constraints at each TSL—including production capacity constraints, engineering resource constraints, and testing capacity constraints. In particular, DOE requests comment on whether the proposed compliance date allows for a sufficient conversion period to make the equipment design and facility updates necessary to meet a new standard.

15. DOE requests comments the cumulative regulatory burden on manufacturers. Specifically, DOE seeks input on any product-specific Federal regulations that go into effect within three years of the proposed effective date and recommendations on how DOE may be able to align varying regulations in order to mitigate cumulative burden.

16. DOE seeks comment on the impacts, if any, there would be on the level of utility and available features currently offered by manufacturers with respect to the pumps that would be regulated under this proposal.

17. DOE seeks input on the requirements for display of required information on labels.

18. DOE seeks comment on the feasibility of including the impeller diameter for each unit on the nameplate. Specifically, when shipping bare pumps to distributors, would it be more appropriate for this field to be left blank and filled in by the distributor?

19. DOE requests comment on modifications or additions to the proposed reporting requirements for certification of pumps. DOE requests comment on whether pump efficiency at BEP should be required to be included in the certification reports.

20. DOE requests additional information on the number of small businesses in the industry, the names of those small businesses, and their role in the market.

21. DOE requests data on the market share of small manufacturers and on the number of model offerings from small manufacturers.

22. DOE requests data on the cost of hydraulic redesigns for a small manufacturer.

DOE requests data on the cost of capital for small manufacturers to better quantify how small manufacturers might be disadvantaged relative to large competitors. DOE also invites comment on DOE's calculations in Table VII.1, which show that the relative impact of conversion costs on the average small business, as estimated as a percentage of annual research and development expenses and total revenue, would be less than the impact felt by average large manufacturer.

23. DOE requests comment and data on the impact of the proposed standard on small business manufacturers.

IX. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Intergovernmental relations, small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on March 17, 2015.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend parts 429 and 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.12(b)(13) is revised to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(b) * * *

(13) Product specific information listed in §§ 429.14 through 429.59 of this chapter.

* * * * *

■ 3. Section 429.59 as proposed to be added in the April 1, 2015, issue of the **Federal Register**, is amended by adding paragraph (b) to read as follows:

§ 429.59 Pumps.

* * * * *

(b) *Certification reports.*

(1) The requirements of § 429.12 are applicable to pumps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) For bare pumps, pumps sold with drivers other than electric motors, and pumps sold with single-phase electric motors: Manufacturer name; model number(s); equipment class from the table in § 431.465(b) of this chapter; PEI_{CL}; PER_{CL}; the rated (tested) speed of rotation in revolutions per minute (rpm) at the best efficiency point (BEP) of the pump; the nominal speed of rotation in revolutions per minute (rpm); pump total head in feet (ft.) at BEP and nominal speed; volume per unit time (flow rate) in gallons per minute (gpm) at BEP and nominal speed; calculated driver power input at each load point *i* (P^{in}_i), corrected to nominal speed, in horsepower (hp); pump efficiency at BEP in percent (%); full impeller diameter in inches (in.); the pump configuration (*i.e.,* bare pump); for RSV and VTS pumps, the number of stages tested; and for VTS pumps, the bowl diameter in inches (in.).

(ii) For pumps sold with electric motors not equipped with continuous or non-continuous controls: Manufacturer name; model number(s); equipment class from the table in § 431.465(b) of this chapter; PEI_{CL}; PER_{CL}; the rated (tested) speed of rotation in revolutions per minute (rpm) at the best efficiency point (BEP) of the pump; the nominal speed of rotation in revolutions per minute (rpm); pump total head in feet (ft.) at BEP and nominal speed; volume per unit time (flow rate) in gallons per minute (gpm) at BEP and nominal speed; driver power input at each load point *i* (P^{in}_i), corrected to nominal speed, in horsepower (hp); pump efficiency at BEP in percent (%); full impeller diameter in inches (in.); whether the PEI_{CL} is calculated or tested; the pump configuration (*i.e.,* pump sold with an electric motor); for RSV and VTS pumps, number of stages tested; for VTS pumps, the bowl diameter in inches (in.); and for pumps sold with electric motors regulated by DOE's energy conservation standards for electric motors at § 431.25 of this chapter other single-phase induction motors, the nominal motor efficiency in percent (%) and the motor horsepower (hp) for the motor with which the pump is being rated

(iii) For pumps sold with electric motors, other than single-phase induction motors, and continuous or non-continuous controls: Manufacturer name; model number(s); equipment class from the table in § 431.465(b) of this chapter; PEI_{VL}; PER_{VL}; the rated (tested) speed of rotation in revolutions per minute (rpm) at the best efficiency point (BEP) of the pump; the nominal speed of rotation for certification in revolutions per minute (rpm); pump total head in feet (ft.) at BEP and nominal speed; volume per unit time (flow rate) in gallons per minute (gpm) at BEP and nominal speed; driver power input (measured as the input power to the driver and controls) at each load point *i* (P^{in}_i), corrected to nominal speed, in horsepower (hp); pump efficiency at BEP in percent (%); full impeller diameter in inches (in.); whether the PEI_{VL} is calculated or tested; the pump configuration (*i.e.,* pump sold with a motor and continuous or non-continuous controls); for RSV and VTS pumps, the number of stages tested; for VTS pumps, the bowl diameter in inches (in.); and for pumps sold with electric motors regulated by DOE's energy conservation standards for electric motors at § 431.25 of this chapter, the nominal motor efficiency in percent (%) and the motor horsepower (hp) for the motor with which the pump is being rated.

■ 4. Revise § 429.110(e)(1)(ii) introductory text to read as follows:

§ 429.110 Enforcement testing.

* * * * *

(e) * * *

(1) * * *

(ii) For automatic commercial ice makers; commercial refrigerators, freezers, and refrigerator-freezers; refrigerated bottled or canned vending machines; commercial HVAC and WH equipment; and pumps, DOE will use an initial sample size of not more than four units and follow the sampling plans in appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products). If fewer than four units of a basic model are available for testing when the manufacturer receives the notice, then:

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 6. Section 431.465 is added to read as follows:

§ 431.465 Pumps energy conservation standards and their compliance dates.

(a) For the purposes of paragraph (b) of this section, ''PEI_{CL}'' means the constant load pump energy index and ''PEI_{VL}'' means the variable load pump energy index, both as determined in accordance with the test procedure in § 431.464. For the purposes of paragraph (c) of this section, ''BEP'' means the best efficiency point as determined in accordance with the test procedure in § 431.464.

(b) Each pump that is manufactured starting on [DATE 4 YEARS AFTER PUBLICATION OF FINAL RULE] and that:

(1) Is in one of the equipment classes listed in the table in this section;

(2) Meets the definition of a clean water pump in § 431.462; and

(3) Conforms to the characteristics listed in paragraph (c) of this section must have a PEI_{CL} or PEI_{VL} rating of not more than 1.00 using the appropriate C-value in the table in this section:

Equipment class [1]	Maximum PEI [2]	C-Value [3]
ESCC.1800.CL	1.00	128.47
ESCC.3600.CL	1.00	130.42
ESCC.1800.VL	1.00	128.47

Equipment class [1]	Maximum PEI [2]	C-Value [3]
ESCC.3600.VL	1.00	130.42
ESFM.1800.CL	1.00	128.85
ESFM.3600.CL	1.00	130.99
ESFM.1800.VL	1.00	128.85
ESFM.3600.VL	1.00	130.99
IL.1800.CL	1.00	129.30
IL.3600.CL	1.00	133.84
IL.1800.VL	1.00	129.30
IL.3600.VL	1.00	133.84
RSV.1800.CL	1.00	129.63
RSV.3600.CL	1.00	133.20
RSV.1800.VL	1.00	129.63
RSV.3600.VL	1.00	133.20
VTS.1800.CL	1.00	134.13
VTS.3600.CL	1.00	134.13
VTS.1800.VL	1.00	134.13
VTS.3600.VL	1.00	134.13

[1] Equipment class designations consist of a combination (in sequential order separated by periods) of: (1) an equipment family (ESCC = end suction close-coupled, ESFM = end suction frame mounted, IL = in-line, RSV = radially split, multi-stage, vertical, in-line, diffuser casing, VTS = vertical turbine submersible); (2) nominal speed of rotation (1800 = 1800 rpm, 3600 = 3600 rpm); and (3) an operating mode (CL = constant load, VL = variable load). Determination of the operating mode is determined using the test procedure in appendix A to subpart Y of part 431.

[2] For equipment classes ending in .CL, the relevant PEI is PEI_{CL}. For equipment classes ending in .VL, the relevant PEI is PEI_{VL}.

[3] The C-values shown in this table must be used in the equation for PER_{STD} when calculating PEI_{CL} or PEI_{VL}, as described in section II.B of appendix A to subpart Y of part 431.

(c) The energy conservation standards in paragraph (b) of this section apply only to pumps with the following characteristics:

(1) Shaft power of at least 1 hp but no greater than 200 hp at the best efficiency point (BEP) at full impeller diameter for the number of stages required for testing (see appendix A to subpart Y of part 431);

(2) Flow rate of 25 gpm or greater at BEP at full impeller diameter;

(3) Maximum head of 459 feet at BEP at full impeller diameter;

(4) Design temperature range from −10 to 120 °C;

(5) Designed to operate with either:

(i) A 2- or 4-pole induction motor; or

(ii) A non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 revolutions per minute and/or 1,440 and 2,160 revolutions per minute; and

(6) For VTS pumps, a 6-inch or smaller bowl diameter.

(7) Except that the energy efficiency standards in paragraph (b) of this section do not apply to the following pumps:

(i) Fire pumps.

(ii) Self-priming pumps.

(iii) Prime-assist pumps.

(iv) Sealless pumps.

(v) Pumps designed to be used in a nuclear facility subject to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities.''

(vi) Pumps meeting the design and construction requirements set forth in Military Specification MIL–P–17639F, ''Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use'' (as amended).

■ 7. Section 431.466 is added to read as follows:

§ 431.466 Pumps labeling requirements.

(a) *Pump nameplate*—(1) *Required information.* The permanent nameplate of a pump for which standards are prescribed in § 431.465 must be marked clearly with the following information:

(i) For bare pumps and pumps sold with electric motors but not continuous or non-continuous controls, the rated pump energy index—constant load (PEI_{CL}) as determined pursuant to § 431.464, and for pumps sold with motors and continuous or non-continuous controls, the rated pump energy index—variable load (PEI_{VL}) as determined pursuant to § 431.464;

(ii) The model number; and

(iii) The unit's actual impeller diameter, as distributed in commerce.

(2) *Display of required information.* All orientation, spacing, type sizes, type faces, and line widths to display this required information shall be the same as or similar to the display of the other performance data on the pump's permanent nameplate. The PEI_{CL} or $PEI_{VL,}$ as appropriate to a given pump model, shall be identified in the form ''PEI_{CL} ____'' or ''PEI_{VL} ____.'' The model number shall be in one of the following forms: ''Model ____'' or ''Model number ____'' or ''Model No. ____.'' The unit's impeller diameter shall be in the form ''Imp. Dia. ____ (in.).''

(b) *Disclosure of efficiency information in marketing materials.* (1) The same information that must appear on a pump's permanent nameplate pursuant to paragraph (a)(1) of this section, shall also be prominently displayed:

(i) On each page of a catalog that lists the pump; and

(ii) In other materials used to market the pump.

(2) [Reserved]

[FR Doc. 2015–06947 Filed 4–1–15; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of Health and Human Services

Administration for Children and Families
Privacy Act of 1974; System of Records Notice; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records Notice

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of new, amended, and deleted Privacy Act systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Administration for Children and Families is publishing notice of a republication multiple systems of records, including amendments to existing systems, establishment of new systems, and deletion of obsolete systems.

DATES: *Effective:* This Notice will become effective 30 days after publication, unless the Administration for Children and Families makes changes based on comments received. Written comments should be submitted on or before the effective date.

ADDRESSES: The public should address written comments to: Gary Cochran, Senior Agency Officer for Privacy, Administration for Children and Families, 901 D St. SW., 3rd Floor Washington, DC 20024; Email: *gary.cochran@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: The following contact persons can answer questions about the system of records notices (SORNs) for systems maintained in these offices within the Administration for Children and Families:

FYSB—Family and Youth Services Bureau

FYSB Research and Evaluation Project Records—Kim Franklin, Administration for Children and Families, 901 D St. SW., 7th Floor, Washington, DC 20024; Email: *kim.franklin@acf.hhs.gov.*

OPRE—Office of Planning, Research and Evaluation

OPRE Research and Evaluation Project Records—Naomi Goldstein, Privacy Officer, Administration for Children and Families, 901 D St. SW., Washington, DC 20024; Email: *naomi.goldstein@acf.hhs.gov.*

OFA—Office of Family Assistance

OFA Tribal Temporary Assistance for Needy Families—Felicia Gaither, Privacy Officer, Administration for Children and Families, 901 D St. SW., Washington, DC 20024; Email: *Felicia.gaither@acf.hhs.gov.*

OFA Temporary Assistance for Needy Families (non-Tribal)—Dennis Poe, Privacy Officer, Administration for Children and Families, 901 D St. SW., Washington, DC 20024; Email: *dennis.poe@acf.hhs.gov.*

OCC—Office of Child Care

OCC Federal Child Care Monthly Case Records—Joe Gagnier, Privacy Officer, Administration for Children and Families, 901 D St. SW., Washington, DC 20024; Email: *joseph.gagnier@acf.hhs.gov.*

OCSE—Office of Child Support Enforcement

All OCSE Systems—Linda Deimeke, Privacy Officer, Administration for Children and Families, 901 D St. SW., 4th Floor, Washington, DC 20024; Email: *linda.deimeke@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Explanation of Changes

The Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS) is republishing multiple of its Privacy Act Systems of Records Notices (SORNs). The republication includes establishment of four new systems, alteration of five existing systems, and deletion of five obsolete systems. The following summary identifies each system and describes generally the effect of the republication on that system.

A. Four New Systems Established

ACF is proposing to establish the following new systems of records; the republication includes SORNs for these new systems:

(1) 09–80–0341 FYSB Research and Evaluation Project Records, HHS/ACF/FYSB

(2) 09–80–0361 OPRE Research and Evaluation Project Records, HHS/ACF/OPRE

(3) 09–80–0371 OCC Federal Child Care Monthly Case Records, HHS/ACF/OCC

(4) 09–80–0373 OFA Tribal Temporary Assistance for Needy Families (Tribal TANF) Data System, HHS/ACF/OFA.

B. Five Existing Systems Revised

ACF is proposing to alter the following five existing systems of records; this republication includes revised SORNs with the following changes for these systems:

(1) 09–90–0151 OFA Temporary Assistance for Needy Families (TANF) Data System, HHS/ACF/OFA

(Last published 6/16/04 at 69 FR 33644)—The revised SORN:

- Changes the SORN number to 09–80–0375;
- Updates the System Location section;
- adds data elements to the Categories of Records section (work-eligible individual indicator, number of deemed core hours for overall rate, and number of deemed core hours for the two-parent rate) and removes certain other data elements;
- updates the Authority section;
- adds explanatory information to the Purpose(s) section, after the three purposes listed;
- in the Routine Uses section, removes an unnecessary routine use pertaining to disclosures of non-identifiable data, renumbers the remaining routine use as 1, and adds new routine uses at 2 through 11; and
- Shortens the Safeguards section to link to HHS' information security policies instead of describing them.

(2) 09–80–0381 OCSE National Directory of New Hires, HHS/ACF/OCSE

(Last published 1/5/11 at 76 FR 559)—The revised SORN:

- Updates the system and storage locations;
- adds two new categories of individuals (4 and 5) to the Categories of Individuals section;
- in the Categories of Records section, adds two new data elements to record category 2 (date of hire and Department of Defense status code), adds one new data element to record category 4 (wage and unemployment compensation records obtained from the Department of Labor), and adds two new record categories (5 and 6);
- updates the Authority section;
- in the Routine Uses section, revises the law enforcement routine use to make it applicable to criminal nonsupport, merges the routine use for disclosures to a court or adjudicative body into the routine use for disclosures to the Department of Justice (DOJ), and adds a routine use for disclosures to a Congressional office;
- lists additional identifiers used for retrieval (state FIPS codes, employer identification numbers), and adds new retention periods (for input records for authorized matching, records pertaining to income withholding, and audit logs), in the Policies and Practices Section; and

• Lists additional record sources (entities authorized to match, employers and other income sources).

(3) 09–80–0383 OCSE Debtor File, HHS/ACF/OCSE

(Last published 1/5/11 at 76 FR 559)—The revised SORN:

• Expands the Categories of Individuals section to include individuals whose records are in input files for matching;

• updates the Categories of Records section to:

○ add data elements to category 2 (income and benefits information, and information pertaining to collection of amounts by state child support enforcement agencies) and category 3 (amounts withheld from a financial institution account, date of withholding, and information pertaining to placement of a lien or levy on an account),

○ add a category for workers' compensation payment records, numbered as 4,

○ revise and renumber the category pertaining to insurer records (formerly 4, now 5), and

○ add a category for income and benefit records from other entities authorized to provide information, numbered as 6.

• updates the Authority section;

• shortens the opening sentence in the Purpose(s) section and expands the description to include additional purposes (aid transmission of information pertaining to lien or levy of financial institution accounts, compare income and benefits information, furnish results of data matches to state agencies, and improve states' abilities to collect);

• in the Routine Uses section:

○ revises routine use 3 to describe additional information that may be disclosed to a financial institution (information pertaining to a request for a lien or levy),

○ adds a new routine use 5 for disclosures to workers' compensation agencies,

○ renumbers former routine use 5 (regarding the Debt Collection Improvement Act) as routine use 6 and revises the heading,

○ renumbers former routine use 6 as routine use 7, revises the heading, and describes additional information that may be disclosed to a state agency (information pertaining to a request for a lien or levy),

○ renumbers former routine use 7 as 8,

○ adds new routine uses 9 and 10 for disclosure of workers' compensation information and income and benefits information to state agencies,

○ limits the law enforcement routine use (formerly 8, now 11) to disclosures pertaining to criminal nonsupport,

○ merges the routine use for disclosures to a court or adjudicative body into the routine use for disclosures to DOJ (formerly 9 and 10, now 12),

○ revises the heading of the contractor routine use (formerly 11, now 13), and

○ adds new routine use 14 for disclosures to a Congressional office; and

• in the Policies and Practices section,

○ lists additional identifiers used for retrieval (FEIN of the financial institution, state FIPS code, Taxpayer Identification Number (TIN), and state child support case identification number), and

○ updates the descriptions of the retention periods, shortens the retention period for financial institution and insurer records from one year to 60 days, adds a one-year retention period for a copy of records matched, and removes the retention period for extracts disclosed for routine uses.

(4) 09–80–0202 OCSE Federal Case Registry of Child Support Orders (FCR), HHS/ACF/OCSE

(Last published 1/5/11 at 76 FR 559)—The revised SORN:

• Changes the SORN number to 09–80–0385;

• updates the system and storage locations;

• expands the Categories of Individuals section to include individuals whose information is collected and/or disseminated through the system as part of authorized technical assistance or matching, and individuals involved in a state IV–E foster care and adoption assistance program;

• in the Categories of Records section:

○ revises the explanation of the locate request process,

○ lists additional record types (judicial or administrative orders, subpoenas, affidavits, financial statements, medical support notices, notices of a lien, and income withholding notices), and

○ includes ''state'' with ''federal agencies'' in one record description;

• updates the Authority section;

• in the Routine Uses section:

○ cites the statutory definition of ''authorized person'' in routine uses 1, 2 and 3 instead of quoting it,

○ limits the law enforcement routine use to disclosures pertaining to criminal nonsupport,

○ merges the routine use for disclosures to a court or adjudicative body into the routine use for disclosures to DOJ,

○ adds a routine use for disclosures to a Congressional office, and

○ revises the heading of the contractor routine use;

• in the Policies and Practices section,

○ lists additional identifiers used for retrieval (taxpayer identification number (TIN), transaction serial number, name and date of birth),

○ removes unnecessary wording from retention period (1),

○ adds match result records to retention period (2)(a) and removes the retention period formerly listed as (2)(c),

○ revises retention period (5), and

○ adds a new retention period (6);

• removes an unnecessary sentence (about filtering redundant data) from the Record Source Categories: section; and

• provides a more complete explanation of the exemptions claimed for the system, in the Exemptions section.

(5) 09–80–0387 Federal Parent Locator Service Child Support Services Portal, HHS/ACF/OCSE

(Last published 7/21/10 at 75 FR 42453)—The revised SORN:

• Updates the system and storage locations;

• updates the Authority section; and

• in the Routine Uses section,

○ adds introductory paragraphs and headings,

○ merges the routine use for disclosures to a court or adjudicative body into the routine use for disclosures to DOJ, and

○ adds a routine use for disclosures to a Congressional office.

C. Three Obsolete Systems Deleted

ACF is deleting three systems because they are obsolete:

(1) 09–80–0100 Records Maintained on Individuals for Program Evaluative Purposes Under Contract, HHS/HDS

(Last published 12/30/86 at 51 FR 47061)—No longer exists

(2) 09–80–0201 Income and Eligibility Verification for Aid to Families With Dependent Children Quality Control (AFDC–QC) Reviews, HHS/ACF/OFA

(Last published 6/4/93 at 58 FR 31715)—No longer exists

(3) 09–90–0150 Research and Demonstration Data System, HHS/OCSE

(Last published 1/24/85 at 50 FR 3412)—No longer exists

II. The Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the United

States Government collects, maintains, and uses personally identifiable information (PII) in a system of records. A ''system of records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a system of records notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individual record subjects can exercise their rights under the Privacy Act to determine if the system contains information about them, to seek access to records about them, and to contest inaccurate information about them.

Dated: March 26, 2015.

Michael Curtis,

Director, Office of Information Services, Administration for Children and Families.

A. The following three systems of records are deleted:

(1) 09–80–0100 Records Maintained on Individuals for Program Evaluative Purposes Under Contract, HHS/HDS

(2) 09–80–0201 Income and Eligibility Verification for Aid to Families With Dependent Children Quality Control (AFDC–QC) Reviews, HHS/ACF/OFA

(3) 09–90–0150 Research and Demonstration Data System, HHS/OCSE

B. New SORNs are published for four new systems of records, as follows:

System Number: 09–80–0341

SYSTEM NAME:

FYSB Research and Evaluation Project Records, HHS/ACF/FYSB

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Research and Evaluation Division, Family and Youth Services Bureau (FYSB), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), Portals Building, Suite 800, 1250 Maryland Avenue SW., Washington, DC. A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FYSB research and evaluation projects may cover any program, activity, or function of FYSB, including but not limited to Runaway and Homeless Youth Programs, Transitional Living Program, Maternity Group Homes Program, Street Outreach Program, Mentoring Children of Prisoners Program, Family Violence Programs, Abstinence Education Programs, and other existing and future programs. Records in this system may be about any individual who participates in a FYSB-sponsored program as a service recipient or service provider. For some programs, the records may include information about family members of program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about program participants including their identities, addresses, occupations, professions, school or job performances, health status, test scores, and other categories of information relevant to the evaluation of a particular program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*); Child and Family Services Improvement Act (Pub. L. 109–288); Promoting Safe and Stable Families Act (42 U.S.C. 629 *et seq.*); Program for Abstinence Education (42 U.S.C. 710); Keeping Children and Families Safe Act (42 U.S.C. 5101).

PURPOSE(S):

The Family and Youth Services Bureau in the Administration for Children and Families (ACF) is responsible for advising the Commissioner on Administration on Children, Youth, and Families on increasing the effectiveness and efficiency of FYSB programs. This system of records may contain personal information subject to the Privacy Act of 1974 that is produced by FYSB research and evaluation projects. Only projects that involve the retrieval of records by personal identifier are subject to the Privacy Act of 1974 and are covered by this system. The procedures for the collection of information about research subjects in FYSB's evaluation projects are reviewed, as appropriate, by Institutional Review Boards, are subject to HHS regulations on research with human subjects, including requirements for informed consent.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, 5 U.S.C. 552a(b), under which HHS may release information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. For any project that has received a certificate of confidentiality, none of these routine uses shall be read to authorize a disclosure that would not be allowed by the terms of the certificate of confidentiality. In addition, contractors may be restricted by contract from making a disclosure allowed as a routine use or by law without the consent of HHS, of the data subject, or both, unless the disclosure is required by law.

(1) Disclosure for Law Enforcement Purposes.

Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity. However, because this is a research and evaluation system, no information will be disclosed for use in any investigation, prosecution, or other action targeted against any individual who is the subject of the record.

(2) Disclosure Incident to Requesting Information.

Information may be disclosed (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested), to any source from which additional information is requested when necessary to obtain information relevant to the research or evaluation being conducted.

(3) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(4) Disclosure to Department of Justice or in Proceedings.

- Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when:
- HHS, or any component thereof; or
- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the

Department of Justice or HHS has agreed to represent the employee; or

• The United States, if HHS determines that litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or HHS is deemed by HHS to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(5) Disclosure to Contractor.

Information may be disclosed to a contractor performing or working on a contract for HHS and who have a need to have access to the information in the performance of their duties or activities for HHS.

(6) Disclosures for Administrative Claims, Complaints, and Appeals.

Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

(7) Disclosure in Connection With Litigation.

Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against HHS, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

(8) Disclosure in the Event of a Security Breach.

Information may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, provided the information disclosed is relevant and necessary for that assistance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Depending on the project, records may be stored on paper or other hard copy, computers, and networks.

RETRIEVABILITY:

Depending on the project, records may be retrieved by name, code, or other unique identifier. In some cases, individuals may be assigned identifiers specific to a project or series of projects.

SAFEGUARDS:

All contractors or other record keepers are required to maintain appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records. Records are secured in compliance with Federal requirements, including the Federal Information Security Management Act, HHS Security Program Policy, and any applicable requirements for the encryption of personal data.

RETENTION AND DISPOSAL:

Identifiers are removed once the evaluation is complete.

SYSTEM MANAGER AND ADDRESS:

Director, Research and Evaluation Division, Family and Youth Services Bureau, Administration for Children and Families, Department of Health and Human Services, Portals Building, Suite 800, 1250 Maryland Avenue SW., Washington, DC 20024.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, and address of the individual, and the request must be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name since FYSB does not maintain Social Security Numbers (SSN) or other standard unique identifiers. The requester should try to name or describe the project that maintains the information being requested. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, and address of the individual, and the request must be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name since FYSB does not maintain SSNs or other standard unique identifiers. The requester should try to name or describe the project that maintains the information being requested. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes in not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name since FYSB does not maintain SSNs or other standard unique identifiers. The requester should try to name or describe the project that maintains the information being requested. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD SOURCE CATEGORIES:

Records in this system may be obtained from the record subject; programs funded by FYSB; existing programs operated by federal and state agencies; third party information sources that may include a record subject's relatives, neighbors, friends, employers, and health care providers;

and available commercial and governmental data sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

System Number: 09–80–0361

SYSTEM NAME:

OPRE Research and Evaluation Project Records, HHS/ACF/OPRE

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), 370 L'Enfant Promenade, SW., Washington, DC. A list of contractor sites where records under this system are maintained is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OPRE research and evaluation projects may cover any program, activity, or function of ACF. ACF programs aim to achieve the following: To support and assist low-income families and individuals to increase their own economic independence and self-sufficiency; to increase strong, healthy, supportive communities that have a positive impact on the quality of life and the development of children; and to enter into partnerships with states, communities, American Indian tribes, Native communities, and social service entities that support the development of low-income families and children. These partnerships include services to improve support to people with developmental disabilities, refugees, and migrants to address their needs, strengths, and abilities.

Records in this system may be about any individual who participates in an ACF/OPRE-sponsored research demonstration. For some projects, the records may include information about family members of service recipients and program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The specific types of records collected and maintained are determined by the needs of each research and evaluation project. Typical projects will collect some or all of these records: Name; address; telephone number and other contact information; Social Security Number (SSN); demographic information, including race and ethnicity; date of birth; income; pre-school/Head Start participation; child care utilization; marriage and family status information; health information; income; employment information; child welfare system experiences; citizenship, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 413 of the Social Security Act (42 U.S.C. 613); Section 1110 of the Social Security Act (42 U.S.C. 1310); Improving Head Start for School Readiness Act of 2007 (42 U.S.C. 9836) [Pub. L. 110–134, Section 641(c)(2)]; Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 *et seq.*) and Consolidated Appropriations Act of 2008 (Pub. L. 110–161, Division G, Title II, Payments to States for the Child Care and Development Block Grant); Section 429A of the Social Security Act (42 U.S.C. 628b), as added by the Personal Responsibility and Work Opportunities Reconciliation Act.

PURPOSE(S):

The Office of Planning, Research and Evaluation (OPRE) in the Administration for Children and Families (ACF) is responsible for advising the Assistant Secretary for Children and Families on increasing the effectiveness and efficiency of programs to improve the economic and social well-being of children and families. In collaboration with ACF program offices and others, OPRE is responsible for performance management for ACF, conducts research and policy analyses, and develops and oversees research and evaluation projects to assess program performance and inform policy and practice. This system of records contains personal information subject to the Privacy Act of 1974 that is used in OPRE research and evaluation projects. Only projects that involve the retrieval of records by personal identifier are subject to the Privacy Act of 1974 and are covered by this system. The procedures for the collection of information about research subjects in OPRE's evaluation projects are reviewed, as appropriate, by Institutional Review Boards, are subject to HHS regulations on research with human subjects, including requirements for informed consent.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which ACF may release information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. For any project that has received a certificate of confidentiality, none of these routine uses shall be read to authorize a disclosure that would not be allowed by the terms of the certificate of confidentiality. In addition, contractors may be restricted by contract from making a disclosure allowed as a routine use or by law without the consent of HHS, of the data subject, or both, unless the disclosure is required by law.

(1) Disclosure for Law Enforcement Purpose.

Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity. However, because this is a research and evaluation system, no information will be disclosed for use in any investigation, prosecution, or other action targeted against any individual who is the subject of the record.

(2) Disclosure Incident to Requesting Information.

Information may be disclosed (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested), to any source from which additional information is requested when necessary to obtain information relevant to the research or evaluation being conducted.

(3) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(4) Disclosure to Department of Justice or in Proceedings.

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when:

- HHS, or any component thereof; or
- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- The United States, if HHS determines that litigation is likely to affect HHS or any of its components, is

a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or HHS is deemed by HHS to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(5) Disclosure to Contractor.

Information may be disclosed to a contractor performing or working on a contract for HHS and who have a need to have access to the information in the performance of their duties or activities for HHS.

(6) Disclosure for Administrative Claim, Complaint, and Appeal.

Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

(7) Disclosure in Connection with Litigation.

Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against HHS, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

(8) Disclosure in the Event of a Security Breach.

Information may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, provided the information disclosed is relevant and necessary for that assistance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Depending on the project, records may be stored on paper or other hard copy, computers, and networks.

RETRIEVABILITY:

Depending on the project, records may be retrieved by name, SSN, or other personal identifier. In some cases, individuals may be assigned identifiers specific to a project or series of projects.

SAFEGUARDS:

All contractors or other record keepers are required to maintain appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records. Records are secured in compliance with Federal requirements, including the Federal Information Security Management Act, HHS Security Program Policy, and any applicable requirements for the encryption of personal data.

RETENTION AND DISPOSAL:

Identifiers are removed once the analysis is complete.

SYSTEM MANAGER AND ADDRESS:

Executive Officer, Office of Planning, Research and Evaluation, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in the Department's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about themselves in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in the Department's Privacy Act regulations may be required. 45 CFR 5b.5

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes in not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in the Department's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD SOURCE CATEGORIES:

Records in this system may be obtained from the record subject; existing programs operated by federal and state agencies; third party information sources that may include a record subject's relatives, neighbors, friends, employers, and health care providers; and available commercial and governmental data sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

System Number: 09–80–0371

SYSTEM NAME:

OCC Federal Child Care Monthly Case Records, HHS/ACF/OCC

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Office of Child Care, Administration for Children and Families (ACF), Department of Health and Human Services (HHS), 370 L'Enfant Promenade, SW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Family members from low-income working families receiving child care financial assistance through the Child Care and Development Fund whose information is reported by the states and territories on ACF Form 801.

CATEGORIES OF RECORDS IN THE SYSTEM:

No names are collected. Social Security Numbers (SSN) are collected

when voluntarily provided by families, or a unique state identifier provided by the states is included in lieu of SSNs. Other data fields include state and county, reason for receiving care, total monthly copayment, total monthly income, sources of income, date assistance began. For children, data fields include race/ethnicity, month/year of birth, type of child care, total monthly amount paid to child care provider, total hours of care provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 9858i, 9858j

PURPOSE(S):

When Congress created the Child Care and Development Fund (CCDF) in the Personal Responsibility and Work Opportunity Reconciliation Act, it also created the requirement that case-level data on families receiving CCDF services be collected on a regular basis. States and territories were charged with submitting specific information so that Congress would have some empirical basis for assessing the program. Non-identifiable records are also made available to researchers and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, 5 U.S.C. 552a(b), under which ACF may release information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

(1) Disclosure for Law Enforcement Purpose.

Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

(2) Disclosure for Private Relief Legislation.

Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A 19.

(3) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(4) Disclosure to Department of Justice or in Proceedings.

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when:

- HHS, or any component thereof; or
- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- The United States, if HHS determines that litigation is likely to affect HHS or any of its components,is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or HHS is deemed by HHS to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(5) Disclosure to the National Archives.

Information may be disclosed to the National Archives and Records Administration in records management inspections.

(6) Disclosure to Contractors, Grantees, and Others.

Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for HHS and who have a need to have access to the information in the performance of their duties or activities for HHS.

(7) Disclosure for Administrative Claim, Complaint, and Appeal.

Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

(8) Disclosure to Office of Personnel Management.

Information may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

(9) Disclosure in Connection with Litigation.

Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against HHS, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

(10) Disclosure in the Event of a Security Breach.

Information may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, provided the information disclosed is relevant and necessary for that assistance.

(11) Disclosure to Consumer Reporting Agencies: None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Current records are stored on a computer network/database. Older records are stored on tapes and disks.

RETRIEVABILITY:

Records may be retrieved by state-defined unique identifier (which may be an SSN).

SAFEGUARDS:

Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Office of Child Care, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains

information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about themselves in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes in not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD SOURCE CATEGORIES:

States and territories receiving funds from the Child Care and Development Fund.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

System Number: 09–80–0373

SYSTEM NAME:

OFA Tribal Temporary Assistance for Needy Families (Tribal TANF) Data System, HHS/ACF/OFA

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

TANFB.HQ, Office of Family Assistance (OFA), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), 370 L'Enfant Promenade SW., Washington, DC. A list of contractor sites where system records are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of families (as defined at 45 CFR 286.5) who received assistance under the TANF program in any month.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are three distinct groups of data in the system: Family-level data; adult-level or minor-child-head-of-household data; and child data.

(1) Family level data may include the following items of information: Tribal TANF Database code, report year and month; stratum code; case identification number; Zip code; funding stream; disposition status; new applicant status; number of family members; type of family for work participation; receipt of subsidized housing; receipt of medical assistance; receipt of food stamp assistance; amount of food stamp assistance; receipt of subsidized child care; amount of subsidized child care; amount of child support; amount of family's cash resources; cash, or cash equivalent, amount of assistance and number of months of that assistance; TANF child care (amount, number of children covered, and number of months of assistance); transportation assistance (amount and number of months of assistance); transitional services (amount and number of months of assistance); other assistance (amount and number of months of assistance); amount of reductions in assistance; reason for assistance reductions (sanctions, recoupment of prior overpayment, and other); waiver evaluation experimental and control group status; exemption status from the federal time-limit provisions; and new child-only-family status.

(2) Adult-level or minor child-head-of-household data may include: family affiliation; non-custodial parent indicator; date of birth; Social Security Number (SSN); race and ethnicity; gender; receipt of disability benefits; marital status; relationship to head of household; parent-with-minor-child-in-the-family status; needs of a pregnant woman; education level; citizenship; cooperation with child support; number of months countable towards Federal time-limit; number of countable months remaining under Tribe's negotiated time-limit; exemption status of the reporting month from the Tribe's negotiated time-limit; employment status; work participation status; unsubsidized employment hours; subsidized private and public sector employment hours; work experience hours; on-the-job training hours; job search and job readiness assistance hours; community service program hours; vocational educational training hours; hours of job skills training directly related to employment; hours of education directly related to employment for individuals with no high school diploma or certificate of high school equivalency; hours of satisfactory school attendance for individuals with no high school diploma or certificate of high school equivalency; hours of providing child care services to an individual who is participating in a community service program; hours of additional work activities permitted under a Waiver demonstration; hours of other work activities; required hours of work under a Waiver demonstration; amount of earned income; and amount of unearned income (earned income tax credit, Social Security benefit, Supplemental Security Income (SSI), worker's compensation, and other unearned income).

(3) Child data (*i.e.,* data pertaining to every child in a recipient TANF family) may include: family affiliation; date of birth; SSN; race and ethnicity; gender; receipt of disability benefits; relationship to head of household; parent-with-minor-child-in-the-family status; education level; citizenship; amount of unearned income (SSI and other).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 612 (Section 412 of the Social Security Act). Tribal TANF data collection and reporting regulations are found in 45 CFR part 286.

PURPOSE:

The purposes of the Tribal TANF Data System are: (1) To determine whether Tribes are meeting certain requirements negotiated under the Act, including negotiated work and time-limit requirements; (2) to compile information used to report to Congress on the Tribal TANF program. The TANF data are reported by the Tribes for each calendar quarter. Some records in the system may be provided to Office of Child Support Enforcement for matching with records of individual employment information contained in

the National Directory of New Hires. Match results are transmitted back in a form that is not individually identifiable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, 5 U.S.C. 552a(b), under which ACF may release information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

(1) Disclosure of Identifiable Data for Research.

Information may be disclosed in response to specific requests from public or private entities, where the requester's proposed use of data from the Tribal TANF Data System is found compatible with the purposes for which this data was collected, to supply untabulated data, which may include personal identifiers for individuals whose information is included in the data. No data that may include personal identifiers will be disclosed until the requester has agreed in writing not to use such data to identify any individuals and has provided advance adequate written assurance that the records will be used solely as statistical research or reporting records.

(2) Disclosure for Law Enforcement Purpose.

Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

(3) Disclosure Incident to Requesting Information.

Information may be disclosed (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested), to any source from which additional information is requested when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

(4) Disclosure for Employee Retention, Security Clearance, Contract, or Other Benefit.

Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within HHS or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

(5) Disclosure for Private Relief Legislation.

Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A 19.

(6) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(7) Disclosure to Department of Justice or in Proceedings.

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when:

- HHS, or any component thereof; or
- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- The United States, if HHS determines that litigation is likely to affect HHS or any of its components,is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or HHS is deemed by HHS to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(8) Disclosure to the National Archives.

Information may be disclosed to the National Archives and Records Administration in records management inspections.

(9) Disclosure to Contractors, Grantees, and Others.

Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for HHS and who have a need to have access to the information in the performance of their duties or activities for HHS.

(10) Disclosure for Administrative Claim, Complaint, and Appeal.

Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

(11) Disclosure to Office of Personnel Management.

Information may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

(12) Disclosure in Connection with Litigation.

Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against HHS, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

(13) Disclosure in the Event of a Security Breach.

Information may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, provided the information disclosed is relevant and necessary for that assistance.

(14) Disclosure to Consumer Reporting Agencies.

None.

Note: Data produced by matching Tribe-provided data with data from the Office of Child Support Enforcement's National Directory of New Hires will only be disclosed in accordance applicable routine use disclosures set forth in the Office of Child Support Enforcement's systems of records for OCSE Debtor File and OCSE National Directory of New Hires.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be transmitted electronically and stored on computer tapes, disks, and networks.

RETRIEVABILITY:

Records may be retrieved by state-defined unique identifier (which may be an SSN), or assigned case number.

SAFEGUARDS:

Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

Data is retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Director, TANFB.HQ, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about themselves in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes in not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD SOURCE CATEGORIES:

All information is obtained from participating Tribes.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

No.

C. Revised SORNs are published for five existing systems of records, as follows:

System Number: 09–80–0375 (formerly 09–90–0151)

SYSTEM NAME:

OFA Temporary Assistance for Needy Families (TANF) Data System, HHS/ACF/OFA

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

(1) Office of Information Systems, Office of Administration, Administration for Children and Families (ACF), Department of Health and Human Services (HHS), 370 L'Enfant Promenade SW., Washington, DC; and (2) Office of Family Assistance (OFA), ACF, HHS, 370 L'Enfant Promenade SW., Washington, DC. A list of contractor sites where system records are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Members of families (as defined at 45 CFR 265.2) who received assistance under the TANF program in any month. For data collection and reporting purposes only, family means:

- All individuals receiving assistance as part of a family under the State's TANF or separate State program (including noncustodial parents, where required under 45 CFR 265.3(f)); and
- The following additional persons living in the household, if not otherwise included:

(a) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(b) Minor siblings of any child receiving assistance; and

(c) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

(2) Members of families no longer receiving assistance under the TANF program.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are three distinct groups of data in the TDS (TANF Data Reporting System): Family-level data; adult-level or minor-child-head-of-household data; and child data. States must use for all families, adult-level or minor child-head-of-household, and child data reported each month and must use for all months in the fiscal year: State FIPS Code; County FIPS Code; Tribal code; Reporting Month; Stratum.

(1) Family level data maintained in the TDS may include the following items of information on every family that received assistance during one or more months: Case number—TANF; Zip code; funding stream; disposition; new applicant; number of family members; type of family for work participation; receives subsidized housing; receives medical assistance; receives food stamp; amount of food stamp assistance; receives subsidized child care; amount of subsidized child care; amount of child support; amount of family's cash resources; cash and cash equivalents (amount of assistance and number of months); TANF child care (amount, number of children covered, and number of months); transportation (amount and number of months); transitional services (amount and number of months); other (amount and number of months); reason for and amount of reductions in assistance (sanctions, recoupment of prior overpayment); waiver evaluation experimental and control group; is the TANF family exempt from the Federal time-limit provisions; is the TANF family a new child-only family.

(2) Adult-level or minor child-head-of-household data maintained in the TDS may include: Family affiliation; noncustodial parent indicator; date of

birth; Social Security Number (SSN); race/ethnicity; gender; receives disability benefits; marital status; relationship to head of household; parent-with-minor-child-in-the-family; needs of a pregnant woman; educational level; citizenship/alienage; cooperation with child support; number of months countable towards Federal time-limit; number of countable months remaining under State's (Tribe's) time-limit; Is current month exempt from the State's (Tribe's) time-limit; employment status; work-eligible individual indicator; work participation status; unsubsidized employment; subsidized private-sector employment hours; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service program; vocational educational training; job skills training directly related to employment; education directly related to employment for individuals with no high school diploma or certificate of high school equivalency; satisfactory school attendance for individuals with no high school diploma or certificate of high school equivalency; providing child care services to an individual who is participating in a community service program; other work activities; number of deemed core hours for overall rate; number of deemed core hours for the two-parent rate; amount of earned income; amount of unearned income (earned income tax credit (EITC), Social Security, Supplemental Security Income (SSI), Worker's Compensation, Other Unearned Income)

(3) Child data (*i.e.,* data pertaining to every child in a recipient TANF family) may include: Family affiliation; date of birth; SSN; race and ethnicity; gender; receives disability benefits; relationship to head of household; parent-with-minor-child-in-the-family status; educational level; citizenship/alienage; amount of unearned income (SSI and other unearned income).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 601–619 (Title IV–A of the Social Security Act); 45 CFR part 265 (TANF data collection and reporting regulations); 42 U.S.C. 603(a)(4), 613(d) (Sections 403 and 413 of the Social Security Act); 45 CFR part 270 (collection of information for performance measures).

PURPOSE(S):

The purposes of the TANF Data Reporting System are: (1) To determine whether States are meeting certain requirements prescribed by the Act, including prescribed work and time-limit requirements; (2) to compile information used to report to Congress on the TANF program; and, (3) to compute State scores on work measures and rank States on their performance in assisting TANF recipients to obtain and retain employment. The monthly TANF data are reported by the individual States for each (Federal) fiscal quarter. (The term State is used in this notice to refer to the 50 States, the District of Columbia, and the jurisdictions of Puerto Rico, the U.S. Virgin Islands, and Guam). The State data are pooled to create a national database for each quarter. Some records in the system may be provided to Office of Child Support Enforcement for matching with records of individual employment information contained in the National Directory of New Hires. Match results are transmitted back to OFA in a form that is not individually identifiable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, 5 U.S.C. 552a(b), under which ACF may release information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

(1) Disclosure of Identifiable Data for Research.

Information from this system of records may be disclosed in response to specific requests from public or private entities, where the requester's proposed use of data from the TANF Data System is found compatible with the purposes for which this data was collected, supply untabulated data, which may include personal identifiers for individuals whose information is included in the data. No data that may include personal identifiers will be disclosed until the requester has agreed in writing not to use such data to identify any individuals and has provided advance adequate written assurance that the records will be used solely as statistical research or reporting records.

(2) Disclosure for Law Enforcement Purpose.

Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

(3) Disclosure for Private Relief Legislation.

Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A 19.

(4) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(5) Disclosure to Department of Justice or in Proceedings.

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when: HHS, or any component thereof; or

- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- The United States,

if HHS determines that litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or HHS is deemed by HHS to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(6) Disclosure to the National Archives.

Information may be disclosed to the National Archives and Records Administration in records management inspections.

(7) Disclosure to Contractors, Grantees, and Others.

Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for HHS and who have a need to have access to the information in the performance of their duties or activities for HHS.

(8) Disclosure for Administrative Claim, Complaint, and Appeal.

Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator,

arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

(9) Disclosure to Office of Personnel Management.

Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

(10) Disclosure in Connection with Litigation.

Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against HHS, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

(11) Disclosure in the Event of a Security Breach.

Information may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, provided the information disclosed is relevant and necessary for that assistance.

(12) Disclosure to Consumer Reporting Agencies. None.

Note: Data produced by matching State provided data with data from the Office of Child Support Enforcement's National Directory of New Hires will only be disclosed in accordance with applicable routine use disclosures set forth in the Office of Child Support Enforcement's systems of records for OCSE Debtor File and OCSE National Directory of New Hires.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be transmitted electronically and stored on computer tapes, disks, and networks.

RETRIEVABILITY:

Records may be retrieved by name, state-defined unique identifier (which may be an SSN), or assigned case or family identification numbers.

SAFEGUARDS:

Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

The data transmitted by a State for a fiscal quarter are backed up after the initial processing of the data. The backed-up version of the data is kept only for a period of 30 days. The data transmitted by the States for a fiscal quarter, after processing and acceptance, are pooled to create a national database for the quarter. The national database is stored for up to 24 months after the end of the fiscal year. Afterwards, the database is copied to a compact disc, and the original data are erased. The data on the compact disc is securely maintained by ACF for up to 20 years in order to facilitate research on caseload trends, changes in the characteristics of TANF recipients, or other pertinent research. The eventual disposal of the data will be by means of physical destruction of the CD's containing the data. The Office of Information Systems of the Office of Administration and OFA, ACF, are responsible for the retention and disposal of the data system. The SSNs obtained for the work performance measures for a performance year, although initially kept in an electronic file, are erased after calculation of the work measures for the performance year. The erasing of this SSN data file is done within two years after the performance measures are actually published for a performance year (which precedes the year in which they are calculated). Aggregate data files based on information provided for the work measures are also erased at the same time.

SYSTEM MANAGERS AND ADDRESSES:

(1) Director, Division of Applications Development Services, Office of Information Services, Office of Administration, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

(2) Director, Division of Data Collection and Analysis, TANF Bureau, Office of Family Assistance, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about themselves in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes in not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD SOURCE CATEGORIES:

All information is obtained from the states.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

System Number: 09–80–0381

SYSTEM NAME:

OCSE National Directory of New Hires, HHS/ACF/OCSE

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

National Computer Center, Social Security Administration, Baltimore, Maryland; OCSE Data Facility, Manassas, Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who are newly hired ''employees'' within the meaning of chapter 24 of the Internal Revenue Code of 1986, 26 U.S.C. 3401, whose employers have furnished specified information to a State Directory of New Hires which, in turn, has furnished such information to the National Directory of New Hires pursuant to 42 U.S.C. 653a(g)(2)(A);

(2) Individuals who are federal government employees whose employers have furnished specified information to the National Directory of New Hires pursuant to 42 U.S.C. 653(n) and 653a(b)(1)(c). This category does not include individuals who are employees of a department, agency, or instrumentality performing intelligence or counterintelligence functions, if the head of such department, agency, or instrumentality has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission; and

(3) Individuals to whom unemployment compensation or wages have been paid and about whom the State Directory of New Hires has furnished such information to the National Directory of New Hires pursuant to 42 U.S.C. 653(e)(3) and 653a(g)(2)(B).

(4) Individuals whose information is contained within input records furnished by an authorized state or federal agency for matching to obtain employment, wage, or unemployment compensation information pertaining to those individuals for purposes of establishing or verifying eligibility of applicants for, or beneficiaries of, federal or state benefit programs, such as those funded under 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families). Other individuals whose information is contained within input records furnished for authorized matching are listed in the routine uses to this system of records notice.

(5) Individuals involved in child support cases whose information is collected and disseminated to and from employers (and other payers of income) and state IV–D child support enforcement agencies, courts, and other authorized entities for enforcement of child support orders by withholding of income.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records pertaining to newly hired employees furnished by a State Directory of New Hires pursuant to 42 U.S.C. 653a(g)(2)(A). Records in the system are the name, address, and Social Security Number (SSN) or Taxpayer Identification Number (TIN) and date of hire of the employee, the name, address and federal identification number of the employer of such employee and, at the option of the state, the date of birth or state of hire of the employee.

(2) Records pertaining to newly hired employees furnished by a federal department, agency or instrumentality pursuant to 42 U.S.C. 653a(b)(1)(C), including the name, address, SSN (or TIN) and date of hire of the employee and the name, address and employer identification number of the employer. A Department of Defense status code, if available, is also included in the records.

(3) Records furnished by a State Directory of New Hires pertaining to wages and unemployment compensation paid to individuals pursuant to 42 U.S.C. 653a(g)(2)(B).

(4) Records furnished by a federal department, agency, or instrumentality pertaining to wages paid to individuals pursuant to 42 U.S.C. 653(n) and wage and unemployment compensation records obtained pursuant to an agreement with the Department of Labor pursuant to 42 U.S.C. 653(e)(3).

(5) Input records furnished by a state or federal agency or other entity for authorized matching with the NDNH.

(6) Records collected and disseminated to and from employers (and other income sources) and state IV–D child support enforcement agencies and other authorized entities pertaining to income withholding, including additional information, such as termination date, final payment date and amount, contact information, children's names, lump sum income information, order information, past-due support information, amounts to withhold, and instructions for withholding.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 653(i), 652(a)(9) and 653(a)(1).

PURPOSE(S):

The Office of Child Support Enforcement (OCSE) uses the NDNH primarily to assist states administering programs that improve states' abilities to locate parents, establish paternity, and collect child support. The NDNH is also used to support other programs as specified in sections 453 and 463 of the Social Security Act (42 U.S.C. 653, 663): Temporary Assistance for Needy Families; child and family services; foster care and adoption assistance; establishing or verifying eligibility of applicants for, or beneficiaries of benefit programs; recouping payments or delinquent debts under benefit programs; and for certain research purposes likely to contribute to achieving the purposes of the Temporary Assistance for Needy Families (TANF) or the federal/state child support program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances under which ACF may disclose information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. Any information defined as ''return'' or ''return information'' under 26 U.S.C. 6103 (Internal Revenue Code) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS) or IRS regulations.

(1) Disclosure for Child Support Purposes.

Pursuant to 42 U.S.C. 653(a)(2), 653(b)(1)(A) and 653(c), information about the location of an individual or information that would facilitate the discovery of the location of an individual or identifying information about the individual may be disclosed, upon request filed in accordance with law, to an ''authorized person'' for the purpose of establishing parentage or establishing, setting the amount of, modifying or enforcing child support obligations. Other information that may be disclosed is information about an individual's wages (or other income) from, and benefits of, employment, and information on the type, status, location, and amount of any assets of, or debts owed by or to, the individual. An ''authorized person'' is defined under 42 U.S.C. 653(c) as follows: (1) Any agent or attorney of a state who has a duty or

authority to seek or recover any amounts owed as child and spousal support or to seek to enforce orders providing child custody or visitation rights; (2) a court which has authority to issue an order against a noncustodial parent for support of a child, or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court; (3) the resident parent, legal guardian, attorney, or agent of a child that is not receiving assistance under a state program funded under title IV–A of the Social Security Act (Temporary Assistance for Needy Families); and (4) a state agency that is administering a program operated under title IV–B (child and family services programs) or IV–E (Foster Care and Adoption Assistance programs) of the Social Security Act.

(2) Disclosure for Purposes Related to the Unlawful Taking or Restraint of a Child or Child Custody or Visitation.

Pursuant to 42 U.S.C. 653(b)(1), upon request of an ''authorized person,'' as defined in 42 U.S.C. 663(d)(2), information as to the most recent address and place of employment of a parent or child may be disclosed for the purpose of enforcing any state or federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination.

(3) Disclosure to Department of State under International Child Abduction Remedies Act.

Pursuant to 42 U.S.C. 653(b)(1) and 663(e), the most recent address and place of employment of a parent or child may be disclosed upon request to the Department of State, in its capacity as the Central Authority designated in accordance with section 7 of the International Child Abduction Remedies Act, 42 U.S.C. 11601 *et seq.,* for the purpose of locating the parent or child on behalf of an applicant.

(4) Disclosure to a Foreign Reciprocating Country for Child Support Purposes.

Pursuant to 42 U.S.C. 653(a)(2) and 659a(c)(2), information on the state of residence of an individual sought for support enforcement purposes in cases involving residents of the United States and residents of foreign countries that are the subject of a declaration may be disclosed to a foreign reciprocating country.

(5) Disclosure to the Treasury for Tax Administration Purposes.

Pursuant to 42 U.S.C. 653(i)(3), information may be disclosed to the Secretary of the Treasury for purposes of administering 26 U.S.C. 32 (earned income tax credit), administering 26 U.S.C. 3507 (advance payment of earned income tax credit) and verifying a claim with respect to employment in a tax return.

(6) Disclosure to the Social Security Administration for Verification.

Pursuant to 42 U.S.C. 653(j)(1), the names, SSNs, and birth dates of individuals about whom information is maintained may be disclosed to the Social Security Administration to the extent necessary for verification of the information by the Social Security Administration.

(7) Disclosure for Locating an Individual for Paternity Establishment or in Connection with a Support Order.

Pursuant to 42 U.S.C. 653(j)(2), the results of a comparison between records in this system and the Federal Case Registry of Child Support Orders may be disclosed to the state IV–D child support enforcement agency responsible for the case for the purpose of locating an individual in a paternity establishment case or a case involving the establishment, modification or enforcement of a support order.

(8) Disclosure to State Agencies Operating Specified Programs.

Pursuant to 42 U.S.C. 653(j)(3), information may be disclosed to a state to the extent and with the frequency that the Secretary determines to be effective in assisting the state to carry out its responsibilities under child support programs operated under 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity), child and family services programs operated under 42 U.S.C. 621 through 629m (Title IV–B of the Social Security Act), Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679c (Title IV–E of the Social Security Act) and assistance programs funded under 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

(9) Disclosure to the Commissioner of Social Security.

Pursuant to 42 U.S.C. 653(j)(4), information may be disclosed to the Commissioner of Social Security for the purpose of verifying eligibility for Social Security Administration programs and administering such programs.

(10) Disclosure for Authorized Research Purposes.

Pursuant to 42 U.S.C. 653(j)(5), data in the NDNH, including information reported by employers pursuant to 42 U.S.C. 653a(b), may be disclosed, without personal identifiers, for research purposes found by the Secretary to be likely to contribute to achieving the purposes of 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity) and 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

(11) Disclosure to Secretary of Education for Collection of Defaulted Student Loans

Pursuant to 42 U.S.C. 653(j)(6), the results of a comparison of information in this system with information in the custody of the Secretary of Education may be disclosed to the Secretary of Education for the purpose of collection of debts owed on defaulted student loans, or refunds on overpayments of grants, made under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.* and 42 U.S.C. 2751 *et seq.*) and, after removal of personal identifiers, for the purpose of conducting analyses of student loan defaults.

(12) Disclosure to Secretary of Housing and Urban Development for Verification Purposes.

Pursuant to 42 U.S.C. 653(j)(7), information regarding an individual participating in a housing assistance program (United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); 12 U.S.C. 1701s, 1701q, 1715l(d)(3), 1715l(d)(5), 1715z–1; or 42 U.S.C. 8013) may be disclosed to the Secretary of Housing and Urban Development for the purpose of verifying the employment and income of the individual and, after removal of personal identifiers, for the purpose of conducting analyses of the employment and income reporting of such individuals.

(13) Disclosure to State Unemployment Compensation Agency for Program Purposes.

Pursuant to 42 U.S.C. 653(j)(8), information on an individual for whom a state agency administering an unemployment compensation program under federal or state law has furnished the name and Social Security number, and information on such individual's employer, may be disclosed to the state agency for the purposes of administering the unemployment compensation program.

(14) Disclosure to Secretary of the Treasury for Debt Collection Purposes.

Pursuant to 42 U.S.C. 653(j)(9), information pertaining to a person who owes the United States delinquent nontax debt and whose debt has been referred to the Secretary of the Treasury in accordance with 31 U.S.C. 3711(g), may be disclosed to the Secretary of the Treasury for purposes of collecting the debt.

(15) Disclosure to State Agency for Food Stamp Program Purposes.

Pursuant to 42 U.S.C. 653(j)(10), information on an individual and the

individual's employer may be disclosed to a state agency responsible for administering a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*) for the purposes of administering the program.

(16) Disclosure to the Secretary of Veterans Affairs for Verification Purposes.

Pursuant to 42 U.S.C. 653(j)(11), information about an individual applying for or receiving the following benefits, compensation or services may be disclosed to the Secretary of Veterans Affairs for the purpose of verifying the employment and income of the individual and, after removal of personal identifiers, to conduct analyses of the employment and income reporting of such individuals: (i) Needs-based pension benefits provided under 38 U.S.C. chapter 15, or under any other law administered by the Secretary of Veterans Affairs; (ii) parents' dependency and indemnity compensation provided under 38 U.S.C. 1315; (iii) health care services furnished under subsections 38 U.S.C. 1710(a)(2)(G), (a)(3), (b); or (iv) compensation paid under 38 U.S.C. chapter 11, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

(17) Disclosure for Law Enforcement Purpose.

Information may be disclosed to the appropriate federal, state, local, tribal, or foreign agency responsible for identifying, investigating, and prosecuting, noncustodial parents who knowingly fail to pay their support obligations and meet the criteria for Federal prosecution under 18 U.S.C. 228. The information must be relevant to the violation of criminal nonsupport, as stated in the Deadbeat Parents Punishment Act, 18 U.S.C. 228 and the disclosure must be compatible with the purpose for which the records were collected.

(18) Disclosure to Department of Justice or in Proceedings.

Records may be disclosed to support the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when:

- HHS, or any component thereof; or
- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- The United States,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the court or adjudicative body is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(19) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(20) Disclosure to Contractor to Perform Duties.

Records may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for HHS in accordance with law and with the contract.

(21) Disclosure in the Event of a Security Breach.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, provided the information disclosed is relevant and necessary for that assistance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the NDNH are stored electronically at the Social Security Administration's National Computer Center and the OCSE Data Facility. Historical logs and system backups are stored off-site at an alternate location.

RETRIEVABILITY:

Records maintained in the NDNH are retrieved by the SSN (or TIN) of the individual to whom the record pertains. Records collected and disseminated from employers and other income sources are retrieved by state FIPS codes and employer identification numbers, and records collected and disseminated from state IV–D child support enforcement agencies are retrieved by state FIPS codes.

SAFEGUARDS:

Specific administrative, technical and physical controls are in place to ensure that the records collected and maintained in the NDNH are secure from unauthorized access. Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter.

Logical access controls are in place to limit access to the records to authorized personnel and to prevent browsing. The records are processed and stored in a secure environment. All records are stored in an area that is physically safe from access by unauthorized persons at all times.

Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

Records maintained in the NDNH are retained for 24 months after the date of entry and then deleted from the database pursuant to 42 U.S.C. 653(i)(2)(A). In accordance with 42 U.S.C. 653(i)(2)(B), OCSE shall not have access for child support enforcement purposes to quarterly wage and unemployment insurance information in the NDNH if 12 months have elapsed since the information is provided by a State Directory of New Hires pursuant to 42 U.S.C. 653A(g)(2)(B) and there has not been a match resulting from the use of such information in any information comparison. Notwithstanding these retention and disposal requirements, OCSE may retain such samples of data entered into the NDNH as OCSE may find necessary to assist in carrying out its responsibility to provide access to data in the NDNH for research purposes found by OCSE to be likely to contribute to achieving the purposes of Part A or Part D of title IV of the Act, but without personal identifiers, pursuant to 42 U.S.C. 653(i)(2)(C), (j)(5). Samples are retained only so long as necessary to complete such research. (1) Input records for authorized matching to obtain NDNH information and (2) records pertaining to income withholding collected and disseminated by OCSE are retained for 60 days. Audit logs including information such as employer identification numbers, FIPS code numbers, document tracking numbers, case identification numbers and order identifier are retained up to 5 years.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade 4th Floor East SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about them in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about them in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes is not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any state, from entities authorized to match to receive NDNH information, and from employers and other income sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

System Number: 09–80–0383

SYSTEM NAME:

OCSE Debtor File, HHS/ACF/OCSE

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

National Computer Center, Social Security Administration, Baltimore, Maryland

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals owing past-due child support, as indicated by a state agency administering a child support enforcement program pursuant to 42 U.S.C. 651 through 669b (Title IV, Part D, of the Social Security Act) are covered by this system.

Additional individuals whose records are contained in input files for authorized matching with records in this system are also covered by this system. These additional individuals include those claiming or receiving income or benefits, such as workers' compensation or insurance claims, settlements, awards, and payments.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records pertaining to individuals owing past-due child support, as indicated by a state agency administering a child support enforcement program, including the name, Social Security Number (SSN) or Taxpayer Identification Number (TIN), of such individual, the amount of past-due child support owed by the individual, adjustments to such amount, information on each enforcement remedy applicable to the individual to whom the record pertains, as indicated by a state IV–D child support enforcement agency; the amount of past-due support collected as a result of each such remedy; and a history of updates by the state agency to the records.

(2) Records of the results of a comparison between records in the Debtor File pertaining to individuals owing past-due child support and information maintained by the Secretary of the Treasury concerning the following amounts payable to such individuals: Refunds of federal taxes; salary, wage and retirement benefits; income and benefits information; vendor payments and expense reimbursement payments and travel payments; and information pertaining to the collection of those amounts by state child support enforcement agencies.

(3) Records of the results of a comparison between records in the Debtor File pertaining to individuals owing past-due child support and information provided by a financial institution doing business in two or more states, including the name, record address, SSN (or TIN), or other identifying number of each such individual and information about any account, held by the individual and maintained at such institution, including the amounts to withhold from the account, date of withholding of the amounts, and other information pertaining to the placement of a lien or levy by a state child support enforcement agency on the account.

(4) Records pertaining to individuals claiming or receiving periodic or lump-sum workers' compensation payments (including name, record address, SSN (or TIN), claim numbers, and workers' compensation insurers) which are furnished by a workers' compensation agency and records of the results of a comparison between those records and records in the Debtor File pertaining to individuals owing past-due child support.

(5) Records pertaining to individuals whose information is maintained by an insurer (or its agent) concerning insurance claims, settlements, awards, and payments and the results of a comparison between records in the Debtor File pertaining to individuals owing past-due child support and income and benefits information, including lump sum payment information and information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments and information pertaining to state child support enforcement agency withholding of these amounts.

(6) Records pertaining to individuals claiming or receiving other periodic or lump-sum state or federal benefits or other income and match results between those individuals and individuals owing past-due support.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 652, 653, 664, and 666.

PURPOSE(S):

The primary purpose of the Debtor File is to improve states' abilities to collect past-due child support. The

Debtor File facilitates OCSE's execution of its responsibility to perform the following duties: Transmit to the Secretary of State a certification by a state IV–D child support agency that an individual owes arrearages of child support in an amount exceeding $2,500 for action (with respect to denial, revocation or limitation of passports) pursuant to 42 U.S.C. 652(k)(1); through the Federal Parent Locator Service (FPLS), to aid state IV–D agencies and financial institutions doing business in two or more states in operating a data match system pursuant to 42 U.S.C. 652(l) (see also 42 U.S.C. 666(a)(17)(A)(i)) and to aid in the transmission of information pertaining to a lien or levy of financial institution accounts located as a result of that data match system authorized under 42 U.S.C. 652(a)(7), 666(c)(1)(G), and 666(c)(1)(G)(ii); through the FLPS, to compare information regarding individuals owing past-due support with income and benefits information of such individuals, including lump sum payment information, and furnish information resulting from the data matches to the state agencies responsible for collecting child support from the individuals pursuant to 42 U.S.C. 652(a)(7), 653(a)(2), 666(a)(4) and 666(c)(1)(G); through the FPLS, to compare information regarding individuals owing past-due support with specified information maintained by insurers (or their agents) and furnish information resulting from the data matches to the state agencies responsible for collecting child support from the individuals pursuant to 42 U.S.C. 652(l) (to be redesignated § 652(m)); to assist the Secretary of the Treasury in withholding from refunds of federal taxes paid an amount owed by an individual owing past-due child support pursuant to 42 U.S.C. 664; and to assist state IV–D child support enforcement agencies in the collection of past-due child support through the administrative offset of certain federal payments pursuant to the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), Executive Order 13019, and 31 CFR part 285; and to improve states' abilities to collect past-due and current support from individuals who are owed workers' compensation benefits pursuant to 42 U.S.C. 653(e)(1); 666(a)(1)(A), (b)(1) and (8), and (c)(1)(F) and (G); and 653(b)(1)(B). OCSE operates the FPLS pursuant to 42 U.S.C. 652(a)(9) and 42 U.S.C. 653(a)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances under which ACF may disclose information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. Any information defined as ''return'' or ''return information'' under 26 U.S.C. 6103 (Internal Revenue Code) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS) or IRS regulations.

(1) Disclosure to the Treasury to Withhold Past-Due Support.

Pursuant to 42 U.S.C. 664 and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), information pertaining to an individual owing past-due child support may be disclosed to the Secretary of the Treasury for the purpose of withholding the past-due support from amounts payable as refunds of federal taxes; salary, wage and retirement payments; vendor payments; and expense reimbursement payments and travel payments.

(2) Disclosure to State Department for Passport Purposes.

Pursuant to 42 U.S.C. 652(k), information pertaining to an individual owing past-due child support in a specified amount, as certified by a state child support enforcement agency, may be disclosed to the Secretary of State for the purpose of revoking, restricting, limiting, or denying a passport to the individual.

(3) Disclosure to Financial Institution to Collect Past-Due Support.

Pursuant to 42 U.S.C. 652(l), information pertaining to an individual owing past-due child support may be disclosed to a financial institution doing business in two or more states to identify an individual who maintains an account at the institution for the purpose of collecting past-due support. Information pertaining to requests by the state child support enforcement agencies for the placement of a lien or levy of such accounts may also be disclosed.

(4) Disclosure to Insurer to Collect Past-Due Support.

Pursuant to 42 U.S.C. 652(l) (to be redesignated (m)), information pertaining to an individual owing past-due child support may be disclosed to an insurer (or its agent) to identify an individual with an insurance claim, settlement, award or payment for the purpose of collecting past-due support.

(5) Disclosure to Workers' Compensation Agencies to Collect Current and Past-Due Support.

Pursuant to 42 U.S.C. 653(e)(1); 666(a)(1)(A), (b)(1) and (8), and (c)(1)(F) and (G), information pertaining to an individual owing past-due child support may be disclosed to a workers' compensation agency to identify an individual who is applying for or receiving periodic or lump-sum workers' compensation for the purpose of collecting current and past-due support.

(6) Disclosure of Treasury Information to State Child Support Enforcement Agency of Comparison Information for Assistance in Collecting Past-Due Support.

Pursuant to 42 U.S.C. 664 and the Debt Collection Improvement Act 1996 (Pub. L. 104–134), the results of a comparison of information pertaining to an individual owing past-due child support and information maintained by the Secretary of Treasury pertaining to amounts payable to the individual for refunds of federal taxes; salary, wage and retirement benefits; vendor payments; expense reimbursement payments; or travel payments may be disclosed to a state IV–D child support agency for the purpose of assisting state agencies in collecting past-due support.

(7) Disclosure of Financial Institution Information to State Child Support Enforcement Agency of Comparison Information for Assistance in Collecting Past-Due Support.

Pursuant to 42 U.S.C. 652(l), the results of a comparison between information pertaining to an individual owing past-due child support and information provided by multistate financial institutions may be disclosed to a state child support enforcement agency for the purpose of assisting state agencies-in collecting past-due support. Information pertaining to responses to requests by the state child support enforcement agencies for the placement of a lien or levy of such accounts may also be disclosed.

(8) Disclosure of Insurance Information to State Child Support Enforcement Agency for Assistance in Collecting Past-Due Support.

Pursuant to 42 U.S.C. 652(l) (to be redesignated subsection (m)), the results of a comparison between information pertaining to an individual owing past-due child support and information maintained by an insurer (or its agent) concerning insurance claims, settlements, awards, and payments may be disclosed to a state IV–D child support enforcement agency for the

purpose of assisting state agencies in collecting past-due support.

(9) Disclosure of Workers' Compensation Information to State Child Support Enforcement Agency for Assistance in Collecting Past-Due and Current Support.

Pursuant to 42 U.S.C. 653(b)(1)(B), the results of a comparison between the information pertaining to an individual owing past-due child support and information maintained by a workers' compensation agency concerning workers' compensation payments may be disclosed to a state IV–D child support enforcement agency for the purpose of assisting states in collecting past-due support and any current support owed by the individual.

(10) Disclosure of Income and Benefits Information to State Child Support Enforcement Agency for Assistance in Collecting Past-Due and Current Support.

Pursuant to 42 U.S.C. 652(a)(7), 653(a)(2), 666(a)(4) and 666(c)(1)(G), the results of a comparison between the information pertaining to an individual owing past-due child support and income and benefits information of such individuals, including lump sum payment information, may be disclosed for the purpose of assisting states in collecting past-due support and any current support owed by the individual.

(11) Disclosure for Law Enforcement Purpose.

Information may be disclosed to the appropriate federal, state, local, tribal, or foreign agency responsible for identifying, investigating, and prosecuting noncustodial parents who knowingly fail to pay their support obligations and meet the criteria for federal prosecution under 18 U.S.C. 228. The information must be relevant to the violation of criminal nonsupport, as stated in the Deadbeat Parents Punishment Act, 18 U.S.C. 228 and the disclosure must be compatible with the purpose for which the records were collected.

(12) Disclosure to Department of Justice or in Proceedings.

Information may be disclosed to support the Department of Justice, or in a proceeding before a court, or adjudicative body, or other administrative body before which HHS is authorized to appear, when:

- HHS, or any component thereof; or
- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- The United States, if HHS determines that litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the court or other adjudicative body is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(13) Disclosure to Contractor to Perform Duties.

Information may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for HHS in accordance with law and with the contract.

(14) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(15) Disclosure in the Event of a Security Breach.

Information may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, provided the information disclosed is relevant and necessary for that assistance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the Debtor File are stored electronically at the Social Security Administration's National Computer Center. Historical logs and system backups are stored offsite at an alternate location.

RETRIEVABILITY:

Records maintained in the Debtor File are retrieved by the SSN or TIN of the individual to whom the record pertains; provided, however, that for the purpose of comparing information in the Debtor File with information provided by workers' compensation agencies or insurers (or their agents), records in the Debtor File may be retrieved by the name of the individual and either the date of birth or the address of the individual. For the purpose of collecting and disseminating information provided by state child support agencies and financial institutions, information is retrieved by the FEIN of the financial institution and the state FIPS code of the state child support agency and, where requested, by the state child support case identification number.

SAFEGUARDS:

Specific administrative, technical and physical controls are in place to ensure that the records collected and maintained in the Debtor File are secure from unauthorized access. Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter.

Logical access controls are in place to limit access to the records to authorized personnel and to prevent browsing. The records are processed and stored in a secure environment. All records are stored in an area that is physically safe from access by unauthorized persons at all times.

Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

Records maintained in the Debtor File are retained until the IV–D child support case is in deleted status and there has been no activity on the case for seven years and are then deleted. Records pertaining to a financial institution or an insurer (or its agent) are retained for 60 days and are then deleted; provided, however, that after removal of personal identifiers, the results of a comparison may be retained for such period necessary to conduct analyses for the purpose of estimating potential collections of past-due support by state child support enforcement agencies and are then deleted. OCSE retains information furnished by workers' compensation agencies for only a period necessary to complete the processing of the file, not to exceed 60 days from the date OCSE received the file. A copy of response file records provided to state child support enforcement agencies is retained by OCSE for 60 days and is then deleted. A copy of records matched is retained by OCSE for the purpose of electronically filtering and suppressing the transmission of redundant information for one year and is then deleted.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade 4th Floor East SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about them in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes is not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any state and from multistate financial institutions and insurers (or their agents).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

System Number: 09–80–0385 (formerly 09–80–0202)

SYSTEM NAME:

OCSE Federal Case Registry of Child Support Orders (FCR), HHS/ACF/OCSE

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

National Computer Center, Social Security Administration, Baltimore, Maryland; OCSE Data Facility, Manassas, Virginia

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in child support cases in which services are being provided by the state IV–D child support agencies, and/or individuals who are subject to child support orders established or modified on or after October 1, 1998, and the children of such individuals. Individuals whose information is collected and/or disseminated through the system, as part of authorized technical assistance or matching, including but not limited to individuals involved in a child and family services' program provided by the state IV–B agency, and individuals involved in a state IV–E foster care and adoption assistance program and programs administered by other authorized agencies and entities specified in the routine uses of records maintained in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The FCR maintains, collects, and disseminates several categories of records. The FCR collects and maintains records provided by state child support registries. These records include abstracts of support orders and information from child support cases. The records may include the following information: Name, Social Security number (SSN), state case identification number, state Federal Information Processing Standard (FIPS) code, county code, case type (cases in which services are being provided by the state child support agencies under Title IV–D of the Social Security Act and those cases in which services are not being provided by the state child support agencies), sex, date of birth, mother's maiden name, father's name, participant type (custodial party, non-custodial parent, putative father, child), family violence indicator (domestic violence or child abuse), order indicator, locate request type, and requested locate source. These records are maintained within the FCR and are regularly compared (matched) to the National Directory of New Hires (NDNH) and other federal agencies' databases to locate information for the state child support agencies or other authorized persons.

State child support agencies and other authorized persons can directly request information (referred to as locate requests) from the FPLS, which includes the FCR system of records, and the National Directory of New Hires system of records. The FPLS must seek the requested information from other federal agencies. When state child support agencies or other authorized persons request information from the FPLS, the request is transmitted to the FPLS via the FCR. Upon receipt of such requests, or as a result of the regular comparisons of the FCR with the NDNH and other agencies' databases, the records located pertaining to the requests are disseminated to the requestor via the FCR. The records collected and disseminated, depending upon the requestor's specific authority, may include information retrieved from the FCR, from the NDNH, or from other federal or state agencies. Records from the NDNH and other agencies disseminated through the FCR may include categories of information such as name, SSN (or TIN), address, phone number, employer, employment status and wages, retirement status and pay, assets, military status and pay, federal benefits status and amount, representative payees, unemployment status and amount, children's health insurance, incarceration status, financial institution accounts, assets, and date of death. The FCR also contains information related to those categories of records; for example, the date of receipt of federal benefits.

Additional categories of information include those contained in the following documents: judicial or administrative orders pertaining to child support and medical support; an administrative subpoena; an affidavit in support of establishing paternity; a financial statement; a medical support notice; a notice of a lien; and an income withholding notice. The FCR also maintains: (1) Records (logs) of transactions involving the receipt of requests and the dissemination of requested information; (2) copies of the disseminated information for audit

purposes; and (3) copies of certain disseminated information for the purpose of electronically filtering and suppressing the transmission of redundant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 652(a)(7) and (9), 653(a)(1), (h), and (j)(3)

PURPOSE(S):

The Office of Child Support Enforcement (OCSE) uses the FCR primarily to assist states in administering programs under 42 U.S.C. 651 to 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity) and programs funded under 42 U.S.C. 601 to 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families). Additional purposes are specified in sections 453 and 463 of the Social Security Act. (42 U.S.C. 653, 663).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These routine uses specify circumstances under which ACF may disclose information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. If any record contains a ''family violence indicator'' associated to the record by state child support agencies, if there is reasonable evidence of domestic violence or child abuse and disclosure could be harmful to the party or the child, the record may only be disclosed as determined by a court as provided in 42 U.S.C. 653(b)(2).

Any information defined as ''return'' or ''return information'' under 26 U.S.C. 6103 (Internal Revenue Code) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS) or IRS regulations.

(1) Disclosure for Child Support Purposes.

Pursuant to 42 U.S.C. 653(a)(2), 653(b)(1)(A), and 653(c), information about the location of an individual or information that would facilitate the discovery of the location of an individual may be disclosed, upon request filed in accordance with law, to an ''authorized person,'' as defined in 42 U.S.C. 653(c), for the purpose of establishing parentage or establishing, setting the amount of, modifying or enforcing child support obligations. Information disclosed may include information about an individual's wages (or other income) from, and benefits of, employment, and information on the type, status, location, and amount of any assets of, or debts owed by or to, the individual.

(2) Disclosure to any Department, Agency, or Instrumentality of the United States or of any State to Locate an Individual or Information Pertaining to an Individual.

Pursuant to 42 U.S.C. 653(e)(1), information from the FCR (names and SSNs) may be disclosed to any department, agency, or instrumentality of the United States or of any state on order to obtain information for an ''authorized person'' as defined in 42 U.S.C. 653(c) which pertains to an individual's location, wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); or the type, status, location, and amount of any assets of, or debts owed by or to, the individual.

(3) Disclosure for Purposes Related to the Unlawful Taking or Restraint of a Child or Child Custody or Visitation.

Pursuant to 42 U.S.C. 653(b)(1)(A), upon request of an ''authorized person,'' as defined in 42 U.S.C. 663(d)(2), or upon request of the Department of Justice, Office of Juvenile Justice and Delinquency Prevention, pursuant to 42 U.S.C. 663(f), information as to the most recent address and place of employment of a parent or child may be disclosed for the purpose of enforcing any state or federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination.

(4) Disclosure to the Social Security Administration for Verification.

Pursuant to 42 U.S.C. 653(j)(1), the names, SSNs, and birth dates of individuals about who information is maintained may be disclosed to the Social Security Administration to the extent necessary for verification of the information by the Social Security Administration.

(5) Disclosure for Locating an Individual for Paternity Establishment or in Connection with a Support Order.

Pursuant to 42 U.S.C. 653(j)(2)(B), the results of a comparison between records in this system and the National Directory of New Hires may be disclosed to the state IV–D child support enforcement agency responsible for the case for the purpose of locating an individual in a paternity establishment case or a case involving the establishment, modification, or enforcement of a support order.

(6) Disclosure to State Agencies Operating Specified Programs.

Pursuant to 42 U.S.C. 653(j)(3), information may be disclosed to a state to the extent and with the frequency that the Secretary determines to be effective in assisting the state to carry out its responsibilities under child support programs operated under 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity), child and family services programs operated under 42 U.S.C. 621 through 629m (Title IV–B of the Social Security Act), Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679c (Title IV–E of the Social Security Act) and assistance programs funded under 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

(7) Disclosure to Department of State under International Child Abduction Remedies Act.

Pursuant to 42 U.S.C. 653(b)(1) and 663(e), the most recent address and place of employment of a parent or child may be disclosed upon request to the Department of State, in its capacity as the Central Authority designated in accordance with section 7 of the International Child Abduction Remedies Act, 42 U.S.C. 11601 *et seq.,* for the purpose of locating the parent or child on behalf of an applicant.

(8) Disclosure to Secretary of the Treasury for Certain Tax Purposes.

Pursuant to 42 U.S.C. 653(h)(3), information may be disclosed to the Secretary of Treasury for the purpose of administering sections of the Internal Revenue Code which grant tax benefits based on support or residence of children.

(9) Disclosure for Authorized Research Purposes.

Pursuant to 42 U.S.C. 653(j)(5), data in the FCR may be disclosed, without personal identifiers, for research purposes found by the Secretary to be likely to contribute to achieving the purposes of 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity) and 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

(10) Disclosure to a Foreign Reciprocating Country for Child Support Purposes.

Pursuant to 42 U.S.C. 653(a)(2) and 659a(c)(2), information on the State of residence of an individual sought for support enforcement purposes in cases involving residents of the United States and residents of foreign countries that

are the subject of a declaration may be disclosed to a foreign reciprocating country.

(11) Disclosure for Law Enforcement Purpose.

Information may be disclosed to the appropriate federal, state, local, tribal, or foreign agency responsible for identifying, investigating, and prosecuting noncustodial parents who knowingly fail to pay their support obligations and meet the criteria for federal prosecution under 18 U.S.C. 228. The information must be relevant to the violation of criminal nonsupport, as stated in the Deadbeat Parents Punishment Act, 18 U.S.C. 228 and the disclosure must be compatible with the purpose for which the records were collected.

(12) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(13) Disclosure to Department of Justice or in Proceedings.

Information may be disclosed to support the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when:

- HHS, or any component thereof; or
- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- The United States, if HHS determines that litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or HHS is deemed by HHS to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(14) Disclosure to Contractor to Perform Duties.

Information may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for HHS in accordance with law and with the contract.

(15) Disclosure in the Event of a Security Breach.

Information may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, provided the information disclosed is relevant and necessary for that assistance.

(16) Disclosure to Consumer Reporting Agencies.

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically at the Social Security Administration's National Computer Center and the OCSE Data Facility. Historical logs and system backups are stored offsite at an alternate location.

RETRIEVABILITY:

Records are retrieved by an identification number assigned to a child support case by the state child support enforcement agency, an SSN or TIN of an individual, a transaction serial number, or by a name and date of birth of an individual.

SAFEGUARDS:

Specific administrative, technical and physical controls are in place to ensure that the records collected and maintained in the FCR are secure from unauthorized access. Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter. Logical access controls are in place to limit access to the records to authorized personnel and to prevent browsing. The records are processed and stored in a secure environment. All record are stored in an area that is physically safe from access by unauthorized persons at all times.

Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

(1) Records provided from state child support agencies.

(a) Electronic records furnished by the state child support agency containing child support case and order information (input files) are retained for 60 days and then deleted.

(b) State agency records (as posted to the FCR) remain within the FCR until removed, upon notification by the state agency that the case is closed, provided that, upon request, a sample may be retained for research purposes found by OCSE to be likely to contribute to achieving the purposes of child support programs or the TANF program, but without personal identifiers.

(c) Records pertaining to closed cases are archived on the fiscal year basis and retained for two years. Family violence indicators are removed from the individual's record, upon request by the state that initiated the indicator.

(2) Locate requests and match results.

(a) Locate requests submitted by state child support agencies and other authorized persons and match results are retained for 60 days and are then deleted.

(b) Audit trail records of locate requests and disclosures of match results pursuant to those requests, which include indications of which federal agencies were contacted for locate information, whether information was located, and the type(s) of information returned to the requesting entity, are archived once a year based on the fiscal year. The records are retained for two completed fiscal years and then destroyed. These records indicate the type of information located for the authorized user, not the information itself.

(3) Match results generated as a result of FCR-to-FCR comparisons which locate individuals who are participants in child support cases or orders in more than one state are transmitted to the relevant states. Copies of FCR-to-FCR match results are retained for 60 days and then deleted.

(4) Any record relating or potentially relating to a fraud or abuse investigation or a pending or ongoing legal action, including a class action, is retained until conclusion of the investigation or legal action.

(5) Copies of the FCR records transmitted to the Secretary of the Treasury for the purpose of administering sections of the Internal Revenue Code which grant tax benefits based on support or residence of children (routine use 8) are retained for one year and then deleted.

(6) Records collected or disseminated for technical assistance to child support agencies or other authorized agencies or entities are retained for 60 days to five years, and audit data is retained for a period of up to two years.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, Department of

Health and Human Services, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about them in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about them in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed by the individual to whom such information pertains; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes is not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD SOURCE CATEGORIES:

Records maintained within the FCR are furnished by state child support enforcement agencies. Records disseminated from the FCR for the purpose of providing locate information from the NDNH and other federal agencies are furnished by departments, agencies, or instrumentalities of the United States or any state, employers, financial institutions, and insurers or their agents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

A rulemaking is pending publication to add this system to the list of exempt systems in HHS regulations implementing the Privacy Act (45 CFR 5b, at § 5b.11), and that exemption will be effective upon publication of a Final Rule. The Final Rule will, pursuant to 5 U.S.C. 552a(k)(5), exempt the portions of this system consisting of investigatory material compiled for law enforcement purposes from the requirements in subsections (c)(3) and (d) of the Privacy Act (5 U.S.C. 552a(c)(3) and (d)), subject to the limitations set forth in subsection (k)(5) and to the limitation in 42 U.S.C. 653(b)(2).

Case files marked with the Family Violence Indicator (FVI) (*i.e.,* indicating there is reasonable evidence of domestic violence or child abuse) are *de facto* exempt from the Privacy Act's notification, access and accounting requirements, by virtue of the statutory prohibitions in § 653(b)(2) of the Social Security Act (42 U.S.C. 653(b)(2)). Section 653(b)(2) prohibits disclosure of case files marked with the FVI to anyone other than a court or an agent of the court pursuant to section 653(b)(2)(B), to avoid harm to the custodial parent or the child of such parent.

System Number: 09–80–0387

SYSTEM NAME:

Federal Parent Locator Service Child Support Services Portal, HHS/ACF/OCSE

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

OCSE Data Facility, Manassas, Virginia

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OCSE employees and contractors, and employees of states, financial institutions, insurance companies, federal agencies and other employers who have registered to access the system and its services for the purpose(s) of exchanging information to support electronic income withholding orders process (also referred to as e-IWO), to identify financial holdings, to locate parents or other responsible parties, to intercept tax refunds and administrative payments or to deny or reinstate a U.S. passport for a noncustodial parent owing past-due child support.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to registration requests by individuals seeking access to the portal and its services, including the individual's name, Social Security number (SSN), date of birth, and the address and Federal Employer Identification Number (FEIN) of the individual's employer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 652(a)(7) and (9) and 653(a)(1)

PURPOSE(S):

To validate eligibility for, and maintain an official registry file that identifies individuals and organizations, including third-parties conducting business on behalf of another business or organization that apply for and are granted access privileges to the FPLS Child Support Services Portal and its services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances under which ACF may disclose information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

Any information defined as ''return'' or ''return information'' under 26 U.S.C. 6103 (Internal Revenue Code) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

(1) Disclosure to Department of Justice or in Proceedings.

Records may be disclosed to support the Department of Justice, or in proceedings before a court, or adjudicative body, or other administrative body before which HHS is authorized to appear, when:

- HHS, or any component thereof; or
- 2. Any employee of HHS in his or her official capacity; or
- 3. Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- 4. The United States, is a party to litigation or has an interest in such

litigation, and the use of such records by the Department of Justice or court or adjudicative body is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(2) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(3) Disclosure to Contractor to Perform Duties.

Records may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for HHS in accordance with law and with the contract.

(4) Disclosure in the Event of a Security Breach.

Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, provided the information disclosed is relevant and necessary for that assistance.

(5) Disclosure to Consumer Reporting Agencies. None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are stored electronically at the OCSE Data Facility.

RETRIEVABILITY:

Records are retrieved by the Social Security Number of the individual to whom the record pertains.

SAFEGUARDS:

Specific administrative, technical, and physical controls are in place to ensure that the records collected and maintained in the FPLS Child Support Services Portal are secure from unauthorized access. Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter. Logical access controls are in place to limit access to the records to authorized personnel and to prevent browsing. The records are processed and stored in a secure environment. The individual's SSN is encrypted, and access to, and viewing of, the SSN is restricted to designated employees and contractors of OCSE solely for the purpose of verifying the identity of a registrant or a user of the portal. All records are stored in an area that is physically safe from access by unauthorized persons at all times. Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

Electronic records are deleted when/if OCSE determines that the records are no longer needed for administrative, audit, legal, or operational purposes, and in accordance with records schedules approved by the National Archives and Records Administration. Approved disposal methods for electronic records and media include overwriting, degaussing, erasing, disintegration, pulverization, burning, melting, incineration, shredding, or sanding.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about them in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, Social Security number (SSN), and address of the individual, and should be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about them in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, Social Security number (SSN), and address of the individual, and should be signed by the individual to whom such information pertains; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes is not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5

RECORD SOURCE CATEGORIES:

Information is obtained from individuals and organizations, including third-parties conducting business on behalf of a business or organization, that apply for access privileges to the FPLS Child Support Services Portal and its services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–07440 Filed 4–1–15; 8:45 am]

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Part IV

Department of Commerce

United States Patent and Trademark Office

37 CFR Parts 1, 3, 5, et al.
Changes To Implement the Hague Agreement Concerning International Registration of Industrial Designs; Final Rule

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1, 3, 5, 11, and 41

[Docket No.: PTO–P–2013–0025]

RIN 0651–AC87

Changes To Implement the Hague Agreement Concerning International Registration of Industrial Designs

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY:

Title I of the Patent Law Treaties Implementation Act of 2012 (''PLTIA'') amends the United States patent laws to implement the provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, July 2, 1999, (hereinafter ''Hague Agreement'') and is to take effect on the entry into force of the Hague Agreement with respect to the United States. Under the Hague Agreement, qualified applicants may apply for design protection in the Contracting Parties to the Hague Agreement by filing a single, standardized international design application in a single language. The United States Patent and Trademark Office is revising the rules of practice to implement title I of the PLTIA.

DATES: *Effective date:* The changes in this final rule take effect on May 13, 2015.

Applicability date: The changes to 37 CFR 1.32, 1.46, 1.63, 1.76, and 1.175 in this final rule apply only to patent applications filed under 35 U.S.C. 111, 363, or 385 on or after September 16, 2012. The changes to 37 CFR 1.53(b) and (c) and 1.57(a)(4) in this final rule apply only to patent applications filed under 35 U.S.C. 111 on or after December 18, 2013.

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SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: Under the Hague Agreement available at *http://www.wipo.int/treaties/en/registration/hague/,* qualified applicants may apply for design protection in the Contracting Parties to the Hague Agreement by filing a single, standardized international design application in a single language. Title I of the PLTIA amends title 35, United States Code, to implement the provisions of the Hague Agreement and is to take effect on the entry into force of the Hague Agreement with respect to the United States. This final rule revises the relevant rules of practice in title 37, chapter I, of the Code of Federal Regulations to implement title I of the PLTIA.

Summary of Major Changes to U.S. Practice: The major changes to U.S. practice in title I of the PLTIA pertain to: (1) Standardizing formal requirements for international design applications; (2) establishing the United States Patent and Trademark Office (''USPTO'' or ''Office'') as an office through which international design applications may be filed; (3) providing a right of priority with respect to international design applications; (4) treating an international design application that designates the United States as having the same effect from its filing date as that of a national design application; (5) providing provisional rights for published international design applications that designate the United States; (6) setting the patent term for design patents issuing from both national design applications under chapter 16 and international design applications designating the United States to 15 years from the date of patent grant; (7) providing for examination by the Office of international design applications that designate the United States; and (8) permitting an applicant's failure to act within prescribed time limits in an international design application to be excused as to the United States under certain conditions. In addition, as to the applicability dates for certain provisions in existing rules, this final rule makes those applicability dates more accessible by stating them directly in the body of those rules.

The Office is specifically revising the rules of practice (37 CFR parts 1, 3, 5, 11, and 41) to provide for the filing of international design applications by applicants in the USPTO as an office of indirect filing. The Office will transmit the international design application and any collected international fees to the International Bureau of the World Intellectual Property Organization (''WIPO''), subject to national security review and payment of a transmittal fee. The International Bureau will review the application for compliance with the applicable formal requirements under the Hague Agreement.

The Office is also revising the rules of practice to set forth the formal requirements of an international design application, including specific content requirements where the United States is designated. Specifically, an international design application designating the United States must identify the inventor and include a claim and the inventor's oath or declaration. The final rules also specify that an international design application designating the United States may be refused by the Office as a designated office if the applicant is not a person qualified under 35 U.S.C. chapter 11 to be an applicant.

Additionally, the Office is revising the rules of practice to provide for examination of international design applications that designate the United States. International design applications are reviewed by the International Bureau for compliance with requirements under the Hague Agreement. Where these requirements have been met, the International Bureau will register the industrial design in the International Register and, subsequently, publish the international registration and send a copy of the publication to each designated office. Since international registration will only occur after the International Bureau finds that the application conforms to the applicable formal requirements, examination before the Office will generally be limited to substantive matters. With certain exceptions, the Hague Agreement imposes a time period of up to 12 months from the date of publication of the international registration for an examining office to refuse an international design application. The rules are revised to provide for the applicability of the requirements of 35 U.S.C. chapter 16 to examination of international design applications consistent with the Hague Agreement and to provide for the various notifications to the International Bureau required of an examining office under the Hague Agreement.

The Office is further revising the rules of practice to provide for: (1) Review of a filing date established by the International Bureau; (2) excusing an applicant's failure to act within prescribed time limits in connection with an international design application; (3) priority claims with respect to international design applications; (4) payment of fees; and (5) treatment of international design applications for national security review.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Background: The Hague Agreement, negotiated under the auspices of WIPO, is the latest revision to the 1925 Hague Agreement Concerning the International Deposit of Industrial Designs (''1925

Agreement''). The United States is not a party to the 1925 Agreement and did not join any of the subsequent Acts revising the 1925 Agreement, because those agreements either did not provide, or did not adequately provide, for substantive examination of international design applications by national offices. The Hague Agreement, adopted at a diplomatic conference on July 2, 1999, is the first Act that adequately provides for a system of individual review by the national offices of Contracting Parties.

In accordance with Article 28, the Hague Agreement will enter into force for the United States three months after the date that the United States deposits its instrument of ratification with the Director General of the International Bureau of WIPO or at any later date indicated in the instrument. As stated in the President's November 13, 2006, Letter of Transmittal to the Senate, the United States will not deposit its instrument of ratification until the necessary implementing legal structure has been established domestically. Treaty Doc. 109–21. Title I of the PLTIA, enacted on December 18, 2012, amended title 35, United States Code, in order to implement the Hague Agreement. *See* Public Law 112–211, sections 101–103, 126 Stat. 1527, 1527–33 (2012). Its provisions are to take effect on the entry into force of the Hague Agreement with respect to the United States. On February 13, 2015, the United States deposited its instrument of ratification with the Director General of the International Bureau of WIPO. These final rules implement title I of the PLTIA.

The main purpose of the Hague Agreement is to facilitate protection for industrial designs by allowing applicants to apply for protection in those countries and intergovernmental organizations that are Contracting Parties to the Hague Agreement by filing a single standardized application in a single language. Currently, a U.S. design applicant seeking global protection generally has to file separate design applications in each country or intergovernmental organization for which protection is sought, complying with the formal requirements imposed by each country or intergovernmental organization. The Hague Agreement simplifies the application process and reduces the costs for applicants seeking to obtain rights globally. The Hague Agreement also provides for centralized international registration of designs and renewal of registrations. The Hague Agreement imposes a time limit on a Contracting Party to refuse the effects of international registration in that Contracting Party if the conditions for the grant of protection under the law of that Contracting Party are not met.

Major provisions of the Hague Agreement as implemented by title I of the PLTIA include the following:

Article 3 of the Hague Agreement provides that ''[a]ny person that is a national of a State that is a Contracting Party or of a State member of an intergovernmental organization that is a Contracting Party, or that has a domicile, a habitual residence or a real and effective industrial or commercial establishment in the territory of a Contracting Party, shall be entitled to file an international application.'' Article 4(1)(a) provides that ''[t]he international application may be filed, at the option of the applicant, either directly with the International Bureau or through the Office of the applicant's Contracting Party.'' Article 4(2) allows ''[t]he Office of any Contracting Party [to] require that the applicant pay a transmittal fee to it, for its own benefit, in respect of any international application filed through it.''

Section 101(a) of the PLTIA adds 35 U.S.C. 382 to implement the provisions of Articles 3 and 4. 126 Stat. at 1528. Section 382(a) provides that ''[a]ny person who is a national of the United States, or has a domicile, a habitual residence, or a real and effective industrial or commercial establishment in the United States, may file an international design application by submitting to the Patent and Trademark Office an application in such form, together with such fees, as may be prescribed by the Director.'' *Id.* Section 382(b) requires the Office to ''perform all acts connected with the discharge of its duties under the [Hague Agreement], including the collection of international fees and the transmittal thereof to the International Bureau.'' *Id.* Transmittal of the international design application is subject to 35 U.S.C. chapter 17 and payment of a transmittal fee. *Id.*

Article 5 of the Hague Agreement and Rule 7 of the ''Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement'' (''Hague Agreement Regulations'' or ''Regulations'') concern the contents of an international design application. Article 5(1) requires the international design application to be in one of the prescribed languages and specifies the contents required for all international design applications. Specifically, it provides that the application ''shall contain or be accompanied by (i) a request for international registration under [the Hague Agreement]; (ii) the prescribed data concerning the applicant; (iii) the prescribed number of copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international application, presented in the prescribed manner; however, where the industrial design is two-dimensional and a request for deferment of publication is made in accordance with [Article 5(5)], the international application may, instead of containing reproductions, be accompanied by the prescribed number of specimens of the industrial design; (iv) an indication of the product or products which constitute the industrial design or in relation to which the industrial design is to be used, as prescribed; (v) an indication of the designated Contracting Parties; (vi) the prescribed fees; [and] (vii) any other prescribed particulars.''

Article 5(2) of the Hague Agreement and Rule 11 of the Hague Agreement Regulations set forth additional mandatory contents that may be required by any Contracting Party whose Office is an Examining Office and whose law, at the time it becomes party to the Hague Agreement, so requires. Specifically, Article 5(2) provides that ''an application for the grant of protection to an industrial design . . . [may], in order for that application to be accorded a filing date under that law'' be required to contain any of the following elements: ''(i) Indications concerning the identity of the creator of the industrial design that is the subject of that application; (ii) a brief description of the reproduction or of the characteristic features of the industrial design that is the subject of that application; [and] (iii) a claim.''

Section 101(a) of the PLTIA adds 35 U.S.C. 383 to provide that, ''[i]n addition to any requirements pursuant to chapter 16, the international design application shall contain—(1) a request for international registration under the treaty; (2) an indication of the designated Contracting Parties; (3) data concerning the applicant as prescribed in the treaty and the Regulations; (4) copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international design application, presented in the number and manner prescribed in the treaty and the Regulations; (5) an indication of the product or products that constitute the industrial design or in relation to which the industrial design is to be used, as prescribed in the treaty and the Regulations; (6) the fees prescribed in the treaty and the Regulations; and (7) any other particulars prescribed in the Regulations.'' 126 Stat. at 1528–29.

Article 6 of the Hague Agreement provides a right of priority with respect to international design applications. Article 6(1) provides that ''[t]he international design application may contain a declaration claiming, under Article 4 of the Paris Convention, the priority of one or more earlier applications filed in or for any country party to that Convention or any Member of the World Trade Organization.'' Article 6(2) provides that ''[t]he international [design] application shall, as from its filing date and whatever may be its subsequent fate, be equivalent to a regular filing within the meaning of Article 4 of the Paris Convention.''

Section 101(a) of the PLTIA adds 35 U.S.C. 386 to provide for a right of priority with respect to international design applications. Section 386(a) provides that ''[i]n accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172, a national application shall be entitled to the right of priority based on a prior international design application that designated at least 1 country other than the United States.'' 126 Stat. at 1529. Section 386(b) provides that ''[i]n accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172 and the treaty and the Regulations, an international design application designating the United States shall be entitled to the right of priority based on a prior foreign application, a prior international application as defined in section 351(c) designating at least 1 country other than the United States, or a prior international design application designating at least 1 country other than the United States.'' *Id.* Section 386(c) provides for domestic benefit claims with respect to international design applications designating the United States in accordance with the conditions and requirements of 35 U.S.C. 120. 126 Stat. at 1529–30.

Article 7 of the Hague Agreement and Rule 12 of the Hague Agreement Regulations provide for designation fees. Under Article 7(2) and Rule 12(3), the designation fee may be an ''individual designation fee.'' Article 7(2) provides that for any Contracting Party whose Office is an Examining Office, the ''amount may be fixed by the said Contracting Party . . . for the maximum period of protection allowed by the Contracting Party concerned.'' Rule 12(3) provides that the individual designation fee may ''comprise[ ] two parts, the first part to be paid at the time of filing the international design application and the second part to be paid at a later date which is determined in accordance with the law of the Contracting Party concerned.'' Rule 12(1) lists other fees concerning the international design application, including the basic fee and publication fee.

Article 8(1) of the Hague Agreement and Rule 14 of the Hague Agreement Regulations provide that the International Bureau will examine the international design application for compliance with the requirements of the Hague Agreement and Regulations and invite the applicant to make any required correction within a prescribed time limit. Under Article 8(2), the failure to timely comply with the invitation will result in abandonment of the application, except where the irregularity concerns a requirement under Article 5(2) or a special requirement under the Regulations, in which case the failure to timely correct will result in the application being deemed not to contain the designation of the Contracting Party concerned.

Article 9 of the Hague Agreement establishes the filing date of an international design application. Article 9(1) provides that ''[w]here the international application is filed directly with the International Bureau, the filing date shall, subject to [Article 9(3)], be the date on which the International Bureau receives the international application.'' Article 9(2) provides that ''[w]here the international application is filed through the Office of the applicant's Contracting Party, the filing date shall be determined as prescribed.'' The filing date of an international application filed with an office of indirect filing is prescribed in Rule 13(3) of the Regulations.

Article 9(3) provides that ''[w]here the international application has, on the date on which it is received by the International Bureau, an irregularity which is prescribed as an irregularity entailing a postponement of the filing date of the international application, the filing date shall be the date on which the correction of such irregularity is received by the International Bureau.'' Rule 14(1) sets forth the time limit in which the applicant is required to correct such irregularities, and Rule 14(2) sets forth the irregularities that are prescribed as entailing postponement of the filing date of the international design application.

The PLTIA adds 35 U.S.C. 384, which provides in subsection (a) that the filing date of an international design application in the United States shall be the ''effective registration date'' subject to review under subsection (b). 126 Stat. at 1529. The term ''effective registration date'' is defined in section 381(a)(5), added by the PLTIA, as ''the date of international registration determined by the International Bureau under the treaty.'' 126 Stat. at 1528. Section 384(b) provides that ''[a]n applicant may request review by the Director of the filing date of the international design application in the United States'' and that ''[t]he Director may determine that the filing date of the international design application in the United States is a date other than the effective registration date.'' 126 Stat. at 1529. It also authorizes the Director to ''establish procedures, including the payment of a surcharge, to review the filing date under this section.'' *Id.* Section 384(a) also provides that ''any international design application designating the United States that otherwise meets the requirements of chapter 16 may be treated as a design application under chapter 16.'' *Id.*

Article 10(1) of the Hague Agreement provides that ''[t]he International Bureau shall register each industrial design that is the subject of an international application immediately upon receipt by it of the international application or, where corrections are invited under Article 8, immediately upon receipt of the required corrections.'' Article 10(2) provides that ''[s]ubject to subparagraph (b), the date of the international registration shall be the filing date of the international application.'' Article 10(2)(b) provides that ''[w]here the international application has, on the date on which it is received by the International Bureau, an irregularity that relates to Article 5(2), the date of the international registration shall be the date on which the correction of such irregularity is received by the International Bureau or the filing date of the international application, whichever is the later.'' Under Rule 15(2) of the Regulations, ''[t]he international registration shall contain (i) all the data contained in the international application . . . ; (ii) any reproduction of the industrial design; (iii) the date of the international registration; (iv) the number of the international registration; [and] (v) the relevant class of the International Classification, as determined by the International Bureau.''

Article 10(3)(a) of the Hague Agreement provides that ''[t]he international registration shall be published by the International Bureau.'' Under Article 10(3)(b), ''[t]he International Bureau shall send a copy of the publication of the international registration to each designated Office.''

Section 101(a) of the PLTIA adds 35 U.S.C. 390 to provide that ''[t]he publication under the treaty of an

international design application designating the United States shall be deemed a publication under [35 U.S.C.] 122(b).'' 126 Stat. at 1531.

Article 10(4) of the Hague Agreement provides that the International Bureau shall, subject to Articles 10(5) and 11(4)(b), keep each international application and international registration confidential until publication. Under Article 10(5)(a), ''[t]he International Bureau shall, immediately after registration has been effected, send a copy of the international registration, along with any relevant statement, document or specimen accompanying the international application, to each Office that has notified the International Bureau that it wishes to receive such a copy and has been designated in the international application.''

Article 11 of the Hague Agreement provides for deferment of publication under certain conditions. Article 11(3) prescribes the procedure where a request for deferment of publication is filed in an international design application designating a Contracting Party that has made a declaration under Article 11(1)(b) stating that deferment of publication is not possible under its law.

Article 12(1) of the Hague Agreement provides that ''[t]he Office of any designated Contracting Party may, where the conditions for the grant of protection under the law of that Contracting Party are not met in respect of any or all of the industrial designs that are the subject of an international registration, refuse the effects, in part or in whole, of the international registration. . . .'' Article 12(1) further provides that ''no Office may refuse the effects, in part or in whole, of any international registration on the ground that requirements relating to the form or contents of the international application that are provided for in [the Hague Agreement] or the Regulations or are additional to, or different from, those requirements have not been satisfied under the law of the Contracting Party concerned.'' Article 12(2) provides that the refusal of the effects of an international registration shall be communicated to the International Bureau within the prescribed period and shall state the grounds on which the refusal is based. Under Rule 18(1) of the Hague Agreement Regulations, the prescribed period for sending the notification of refusal is six months from publication, or twelve months from publication where an office makes a declaration under Rule 18(1)(b). The declaration under Rule 18(1)(b) may state that the international registration shall produce the effects under Article 14(2)(a) at the latest ''at a time specified in the declaration which may be later than the date referred to in that Article but which shall not be more than six months after the said date'' or ''at a time at which protection is granted according to the law of the Contracting Party where a decision regarding the grant of protection was unintentionally not communicated within the period applicable under [Rule 18(1)(a) or (b)].'' *See* Rule 18(1)(c).

Rule 18(2)(b) provides that the notification of refusal ''shall contain or indicate (i) the Office making the notification, (ii) the number of the international registration, (iii) all the grounds on which the refusal is based . . ., (iv) where the . . . refusal is based . . . [on] an earlier national, regional or international application or registration, the filing date and number, the priority date (if any), the registration date and number (if available), a copy of a reproduction of the earlier industrial design (if . . . accessible to the public) and the name and address of the owner . . ., (v) where the refusal does not relate to all the industrial designs that are the subject of the international registration, those to which it relates or does not relate, (vi) whether the refusal may be subject to review or appeal . . ., and (vii) the date on which the refusal was pronounced.''

Article 12(3) of the Hague Agreement provides that ''[t]he International Bureau shall, without delay, transmit a copy of the notification of refusal to the holder,'' and that ''[t]he holder shall enjoy the same remedies as if . . . the international registration had been the subject of an application for a grant of protection under the law applicable to the Office that communicated the refusal.'' Under Article 12(4), ''[a]ny refusal may be withdrawn, in part or in whole, at any time by the Office that communicated it.''

Article 13 of the Hague Agreement permits a Contracting Party to notify the Director General in a declaration, where the Contracting Party's ''law, at the time it becomes party to this Act, requires that designs [in the] application conform to a requirement of unity of design, unity of production or unity of use, . . . or that only one independent and distinct design may be claimed in a single application.''

Under Article 14(1) of the Hague Agreement, ''[t]he international registration shall, from the date of the international registration, have at least the same effect in each designated Contracting Party as a regularly-filed application for the grant of protection of the industrial design under the law of that Contracting Party.''

Section 101(a) of the PLTIA adds 35 U.S.C. 385 to provide that ''[a]n international design application designating the United States shall have the effect, for all purposes, from its filing date . . ., of an application for patent filed in the Patent and Trademark Office pursuant to chapter 16 [of title 35, United States Code].'' 126 Stat. at 1529. The PLTIA also amends 35 U.S.C. 154 to provide for provisional rights in international design applications that designate the United States. 126 Stat. at 1531–32.

Article 14(2)(a) of the Hague Agreement provides that ''[i]n each designated Contracting Party the Office of which has not communicated a refusal in accordance with Article 12, the international registration shall have the same effect as a grant of [design] protection . . . under the law of that Contracting Party at the latest from the date of expiration of the period allowed for it to communicate a refusal or, where a Contracting Party has made a corresponding declaration under the Regulations, at the latest at the time specified in that declaration.'' Article 14(2)(b) provides that ''[w]here the Office of a designated Contracting Party has communicated a refusal and has subsequently withdrawn, in part or in whole, that refusal, the international registration shall, to the extent that the refusal is withdrawn, have the same effect in that Contracting Party as a grant of [design protection] under the law of the said Contracting Party at the latest from the date on which the refusal was withdrawn.'' Rule 18(4) of the Hague Agreement Regulations sets forth the required contents of a notification of withdrawal of refusal. Alternatively, under Rule 18*bis*(2), the office of a Contracting Party may send the International Bureau a statement of grant of protection instead of a notification of withdrawal of refusal.

Article 16 of the Hague Agreement and Rule 21 of the Hague Agreement Regulations provide for the recording of certain changes in the International Register by the International Bureau, such as changes in ownership or the name or address of the holder. Under Article 16(2), any such recording at the International Bureau ''shall have the same effect as if it had been made in the Register of the Office of each of the Contracting Parties concerned, except that a Contracting Party may, in a declaration, notify the Director General that a recording [of a change in ownership] shall not have that effect in that Contracting Party until the Office of that Contracting Party has received the

statements or documents specified in that declaration.''

Under Article 17 of the Hague Agreement, an ''international design registration shall be effected for an initial term of five years counted from the date of international registration'' and ''may be renewed for additional terms of five years, in accordance with the prescribed procedure and subject to payment of the prescribed fees.'' The initial term of protection and additional terms may be replaced by a maximum period of protection allowed by a Contracting Party. *See* Article 7(2). The PLTIA amends 35 U.S.C. 173 to set the term of a design patent to 15 years from date of grant. 126 Stat. at 1532.

The PLTIA adds 35 U.S.C. 387 to allow the Director to establish procedures, including a requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), to excuse as to the United States ''[a]n applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application'' upon a showing of unintentional delay. 126 Stat. at 1530.

Hague Agreement Regulations Rule 8 provides for certain requirements concerning the applicant and the creator. Under Rule 8(1)(a)(ii), ''[w]here the law of a Contracting Party bound by the 1999 Act requires the furnishing of an oath or declaration of the creator, that Contracting Party may, in a declaration, notify the Director General of that fact.'' Rule 8(1)(b) provides that the declarations referred to in Rules 8(1)(a)(i) and (a)(ii) shall specify the form and mandatory contents of any required statement, document, oath, or declaration. Rule 8(3) provides that ''[w]here an international application contains the designation of a Contracting Party that has made the declaration referred to in paragraph (1)(a)(ii) it shall also contain indications concerning the identity of the creator of the industrial design.'' *See* discussion of § 1.1021(d).

Relevant documents, including the implementing legislation (title I of the PLTIA), Senate Committee Reports, and the Transmittal Letter, are available on the USPTO Web site at *http://www.uspto.gov/patents/int_protect/index.jsp*. This Web site also contains a link to WIPO's Web site, which makes available relevant treaty documents, currently at *http://www.wipo.int/hague/en/legal_texts/*.

Discussion of Specific Rules

The following is a discussion of the amendments to title 37 of the Code of Federal Regulations, parts 1, 3, 5, 11, and 41.

Section 1.4: Section 1.4(a)(2) is amended to include a reference to the final rules relating to international design applications in subpart I.

Section 1.5: Section 1.5(a) is amended to provide that the international registration number may be used on correspondence directed to the Office to identify an international design application. The international registration number is the number assigned by the International Bureau upon registration of the international design in the International Register. *See* Rule 15 of the Regulations.

Section 1.6: Section 1.6(d)(3) is amended to include the filing of an international design application among the correspondence for which facsimile transmission is not permitted and, if submitted, will not be accorded a receipt date. This is consistent with the treatment of the filing of national patent applications and international applications under the Patent Cooperation Treaty (''PCT'').

Section 1.6(d)(4) is amended to prohibit the filing of color drawings by facsimile in an international design application. This is consistent with the treatment of color drawings in national applications and international applications under the PCT.

Section 1.6(d)(6) is amended to change ''a patent application'' to ''an application'' to clearly prohibit the submission of correspondence by facsimile in an international design application that is subject to a secrecy order under §§ 5.1 through 5.5.

Section 1.8: Section 1.8(a)(2)(i) is amended to add a new paragraph (K) to include the filing of an international design application among the correspondence that will not receive benefit from a Certificate of Mailing or Transmission. *See* discussion of § 1.6(d)(3), *supra.*

Section 1.9: Sections 1.9(a)(1) and (a)(3) are amended to include in the definitions of ''national application'' and ''nonprovisional application,'' respectively, an international design application filed under the Hague Agreement for which the Office has received a copy of the international registration pursuant to Hague Agreement Article 10. Pursuant to 35 U.S.C. 385, added by section 101(a) of the PLTIA, an international design application that designates the United States has the effect from its filing date under 35 U.S.C. 384 of an application for patent filed in the United States Patent and Trademark Office pursuant to 35 U.S.C. chapter 16. 126 Stat. at 1529. The filing date of an international design application is, subject to review, the international registration date. *See* discussion of § 1.1023, *infra.* Under Article 10, the International Bureau will send a copy of the international registration to each designated office after publication (Article 10(3)) or, upon notification by the Contracting Party, immediately after international registration (Article 10(5)). Consequently, the Office will receive a copy of the international registration pursuant to Article 10 only if the United States has been designated. The Office notes that, while the definition of ''nonprovisional application'' in § 1.9(a)(3) may include international applications under the PCT and international design applications under the Hague Agreement satisfying certain conditions, neither the PCT, the Hague Agreement, nor U.S. law provides for provisional international applications or international design applications.

Sections 1.9(l) and 1.9(m) are added to define ''Hague Agreement,'' ''Hague Agreement Article,'' ''Hague Agreement Regulations,'' and ''Hague Agreement Rule'' as used in chapter I of title 37 of the Code of Federal Regulations (''CFR'').

Section 1.9(n) is added to define ''international design application'' as used in chapter I of title 37 of the CFR. Section 1.9(n) further provides that unless otherwise clear from the wording, reference to ''design application'' or ''application for a design patent'' in chapter I of the CFR includes an international design application that designates the United States.

Section 1.14: Section 1.14(a)(1) introductory text is amended to add a reference to added paragraph (j) concerning international design applications.

Section 1.14(a)(1)(ii) is amended to replace the reference to ''abandoned application that has been published as a patent application publication'' with a reference to ''abandoned published application.'' This change is consistent with the language of § 1.11(a) to which § 1.14(a)(1)(ii) refers. In addition, the term ''published application'' is defined in § 1.9(c) as ''an application for patent which has been published under 35 U.S.C. 122(b).'' Pursuant to 35 U.S.C. 374 and 35 U.S.C. 390, international applications and international design applications that designate the United States and are published under the respective treaty, ''shall be deemed a publication under section 122(b).'' Accordingly, a published application for purposes of § 1.14 will include a publication by the International Bureau of either an international application under the PCT or an international design application under the Hague Agreement that designates the United

States. Access to such published applications is permitted under PCT Article 30 and Hague Agreement Article 10. In contrast, the term ''patent application publication'' refers to a publication by the Office under § 1.215. The Office will not publish international design applications under § 1.215 (*see* § 1.211), as international design applications are published in English by the International Bureau under the Hague Agreement. *See* Hague Agreement Article 10(3) and Rule 6(2). *See also* 35 U.S.C. 390, added by the PLTIA, deeming a publication under the Hague Agreement as a publication under 35 U.S.C. 122(b). 126 Stat. at 1531. In addition, the Office does not publish applications for design patents under 35 U.S.C. chapter 16. *See* § 1.211(b).

Sections 1.14(a)(1)(iv)–(vi) are amended to include a publication of an international registration under Hague Agreement Article 10(3) of an international design application designating the United States among the publications for which access to an unpublished application may be obtained. Section 1.14(a)(1)(iv) is amended to permit access to the file contents of an unpublished abandoned application where the application is identified in the publication of an international registration under Hague Agreement Article 10(3) of an international design application designating the United States, or where benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent or has published as a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). Section 1.14(a)(1)(v) is amended to permit access to the file contents of an unpublished pending application where benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent or has published as a statutory invention registration, a U.S. patent application publication, an international publication under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). Section 1.14(a)(1)(vi) is amended to permit access to a copy of the application as originally filed of an unpublished pending application if the application is incorporated by reference or otherwise identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, an international publication under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3) of an international design application designating the United States.

Section 1.14(a)(1)(vii) is amended consistent with amendments to §§ 1.14(a)(1)(iv)–(vi).

Section 1.14(a)(2)(iv) is amended to add a reference to benefit claims under 35 U.S.C. 386, as provided by the PLTIA. 126 Stat. 1529–30.

Section 1.14(j) is added to set forth the conditions under which the records of an international design application maintained by the Office will be made available to the public.

Section 1.14(j)(1) provides that, with respect to an international design application maintained by the Office in its capacity as a designated office for national processing, the records associated with the international design application may be made available as provided under §§ 1.14(a)–(i). Under Hague Agreement Article 10(5), the Office is to keep international design registrations confidential until publication of the international registration by the International Bureau. This provision does not alter the Office's long-standing practice to make application files available to the public to satisfy the constitutionally mandated quid pro quo requiring public disclosure of patented inventions. *See United States ex rel. Pollok* v. *Hall,* 1889 Dec. Comm'r Pat. 582, 48 O.G. 1263 (D.C. 1888) (recognizing that the rights of exclusivity and confidentiality stem from Article I, Section 8, clause 8, of the Constitution in holding that the Office must make available to the public an abandoned application specifically referenced in a patent); P.J. Federico, *Commentary on the New Patent Act,* reprinted in 75 J. Pat. & Trademark Off. Soc'y 161, 196–97 (1993) (as background discussion to the addition of section 122 to the 1952 Patent Act, noting that for nearly 100 years the Office has had regulations requiring that applications be maintained confidential while recognizing public accessibility when an abandoned application is referenced in a later issued patent); *see also Metropolitan West Side Elevated Railroad Co. et al.* v. *Siemans,* 1898 Dec. Comm'r Pat. 220, 222, 85 O.G. 290 (Comm'r Pat. 1898); *In re Reed Manufacturing Co.,* 1900 Dec. Comm'r Pat. 140, 92 O.G. 2001 (Comm'r Pat. 1900); *Ex parte Lewis and Unger,* 1903 Dec. Comm'r Pat. 303, 106 O.G. 543 (Comm'r Pat. 1903); *In re Doman,* 1905 Dec. Comm'r Pat. 101, 115 O.G. 804 (Comm'r Pat. 1905). As a designated office, the Office will establish a file for national processing upon receipt of the published international registration from the International Bureau. In such cases, the records of the application file will be available pursuant to §§ 1.14(a)(ii)–(iii). The provisions of § 1.14(j)(1) provide for access to such international design applications maintained by the Office for national processing, thus treating international design applications the same as regular national applications.

Section 1.14(j)(2) provides that, with respect to an international design application maintained by the Office in its capacity as an office of indirect filing (§ 1.1002), the records of the international design application may be available under § 1.14(j)(1) when they are contained in the file of the international design application maintained by the Office for national processing. Also, if benefit of the international design application is claimed under 35 U.S.C. 386(c) in a U.S. patent or published application, the file contents of the application may be made available to the public, or the file contents of the application, a copy of the application-as-filed, or a specific document in the file of the application may be provided to any person upon written request and payment of the appropriate fee (§ 1.19(b)). The Office will place the application filed with the Office as an office of indirect filing in the file used for national processing as a designated office. Consequently, the records maintained by the Office as an office of indirect filing may be available where the records are part of the file maintained by the Office as a designated office and are available pursuant to § 1.14(j)(1). The records maintained by the Office as an office of the indirect filing may also be available where benefit to the international design application is claimed under 35 U.S.C. 386(c) in a U.S. patent or published application. Under the provisions of 35 U.S.C. 386(c) and 35 U.S.C. 388, applicants may claim benefit to an international design application that designates the United States provided the application claiming benefit of the international design application is filed before the date of withdrawal, renunciation, cancellation, or abandonment of the international application, either generally or as to the United States.

Section 1.16: Sections 1.16(b), (l), and (p) are amended to clarify that the design application fees specified therein are applicable only to design applications filed under 35 U.S.C. 111 (*i.e.,* an application filed under 35

U.S.C. chapter 16). The other provisions of § 1.16 are not changed.

Section 1.17: Section 1.17(f) is amended to specify the fee for filing a petition under § 1.1023 to review the filing date of an international design application in the United States. Section 101(a) of the PLTIA adds 35 U.S.C. 384, which provides that the filing date of an international application in the United States is the effective registration date (35 U.S.C. 384(a)), and authorizes the Director to establish procedures, including the payment of a surcharge, to review the filing date, which may result in a determination that the application has a filing date in the United States other than the effective registration date (35 U.S.C. 384(b)). 126 Stat. at 1529. The review procedure authorized under 35 U.S.C. 384(b) is set forth in § 1.1023, discussed *infra,* which requires, *inter alia,* the fee set forth in § 1.17(f). Under 35 U.S.C. 389(b), added by the PLTIA, all questions of procedures regarding an international design application designating the United States, unless required by the Hague Agreement and Hague Agreement Regulations, shall be determined as in the case of applications filed under 35 U.S.C. chapter 16. 126 Stat. at 1530. Accordingly, pursuant to the authority under 35 U.S.C. 389(b), the fee for filing a petition to review the filing date of an international design application under § 1.1023 is the same as the fee for filing a petition to accord a filing date in a national application (*see* § 1.53(e)).

Section 1.17(g) is amended to specify the fee for filing a petition under § 1.55(g) for acceptance of a belated certified copy of a foreign application in a design application. *See* discussion of § 1.55(g).

Section 1.17(i)(1) is amended to remove the processing fee under § 1.55 for entry of a priority claim or certified copy of a foreign application after payment of the issue fee. *See* discussion of § 1.55(g).

Section 1.17(m) is amended to set forth the fee for filing a petition to excuse an applicant's failure to act within prescribed time limits in an international design application. Section 101(a) of the PLTIA adds 35 U.S.C. 387 to provide that an applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application may be excused as to the United States upon a showing satisfactory to the Director of unintentional delay and under such conditions, including a requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), as may be prescribed by the Director. 126 Stat. at 1530. The conditions for excusing an applicant's failure to act within the prescribed time limits in an international design application are set forth in § 1.1051, discussed *infra.* These requirements include, *inter alia,* the requirement to pay the fee set forth in § 1.17(m). The fee set forth in § 1.17(m) does not include a micro entity amount as this fee is set under 35 U.S.C. 41(a)(7) as amended by section 202(b)(1)(A) of the PLTIA, and not section 10(a) of the AIA. Section 10(b) of the AIA provides that the micro entity discount applies to fees set under section 10(a) of the AIA. *See* Public Law 112–29, 125 Stat. 284, 316–17 (2011). The Office will consider including a micro entity amount in § 1.17(m) in the event that patent fees are again set or adjusted under section 10(a) of the AIA.

Section 1.17(t) is amended to specify the fee for filing a petition under § 1.1052 to convert an international design application to a design application under 35 U.S.C. chapter 16. *See* discussion of § 1.1052, *infra.* The petition fee is not being set pursuant to section 10(a) of the AIA. Rather, the Office is setting this fee in this rulemaking pursuant to its authority under 35 U.S.C. 41(d)(2), which provides that fees for all processing, services, or materials relating to patents not specified in 35 U.S.C. 41 are to be set at amounts to recover the estimated average cost to the Office of such processing, services, or materials.

The Office uses an Activity Based Information (''ABI'') methodology to determine the estimated average costs (or expense) on a per process, service, or material basis including the particular processes and services addressed in this rulemaking. The ABI analysis includes compiling the Office costs for a specified activity, including the direct-expense (*e.g.,* direct personnel compensation, contract services, maintenance and repairs, communications, utilities, equipment, supplies, materials, training, rent, and program-related information technology (''IT'') automation), an appropriate allocation of allocated direct expense (*e.g.,* rent, program-related automation, and personnel compensation benefits such as medical insurance and retirement), and an appropriate allocation of allocated indirect expense (*e.g.,* general financial and human resource management, nonprogram specific IT automation, and general Office expenses). The direct expense for an activity plus its allocated direct expense and allocated indirect expense is the ''fully burdened'' expense for that activity. The ''fully burdened'' expense for an activity is then divided by production measures (number of that activity completed) to arrive at the fully burdened per-unit cost for that activity. The cost for a particular process is then determined by ascertaining which activities occur for the process and how often each such activity occurs for the process. If historical activity level information is not available for a particular fee, then ABI uses a cost build-up approach using position, salary, and burdening rate data to determine the full cost of work related to a particular fee. The ABI analysis in this rulemaking is based upon fiscal year 2012 expense. The prospective fees are calculated using the ABI expense and applying adjustment factors to estimate the cost in fiscal year 2015 expense, as fiscal year 2015 may be the next opportunity to consider whether to revisit the fees under section 10(a) of the AIA. This analysis uses 2012 expense as a proxy and adjusts for yearly inflation in the out-years.

The Office is estimating the fiscal year 2015 cost in this rulemaking by using the change in the Consumer Price Index for All Urban Consumers (''CPI–U'') for fiscal years 2013, 2014, and 2015, as the CPI–U is a reasonable basis for determining the change in Office costs between fiscal year 2012 and fiscal year 2015. The individual CPI–U increases for each fiscal year are multiplied together to obtain a cumulative CPI–U from fiscal year 2013 through fiscal year 2015. The actual CPI–U increase for fiscal year 2013 was 1.4 percent. The CPI–U increase for fiscal year 2014 is forecasted to be 1.6 percent. The CPI–U increase for fiscal year 2015 is forecasted to be 2.0 percent. *See Fiscal Year 2015 Analytical Perspectives, http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/spec.pdf.* Thus, the estimated fiscal year 2015 cost amounts are calculated by multiplying the actual expense amount for fiscal year 2012 by 1.051 (1.014 multiplied by 1.016 multiplied by 1.020 equals 1.051). The estimated fiscal year 2015 cost amounts are then rounded to the nearest ten dollars by applying standard arithmetic rules so that the resulting fee amounts will be convenient for international design application users.

The processing of a petition to convert an international design application to a design application under 35 U.S.C. chapter 16 involves review and preparation of a decision for the petition. An estimate of the number of hours required for a GS–12, Step 5, attorney to review the petition and draft a decision is two hours. The ABI analysis indicates that the estimated fully burdened expense during fiscal

year 2012 to review and prepare a decision for the petition is $172 ($86 fully burdened labor cost per hour multiplied by 2). Thus, the Office estimates that the fiscal year prospective unit cost to review the petition and draft a decision, using the estimated CPI–U increase for fiscal years 2013, 2014, and 2015, is $181 ($172 multiplied by 1.051), which, when rounded to the nearest ten dollars, is a petition fee for conversion of $180. Additional information concerning the Office's analysis of the estimated fiscal year 2015 costs for converting an international design application to a design application under 35 U.S.C. chapter 16 is available upon request.

Section 1.18: Section 1.18(b)(3) is added to provide that an issue fee paid through the International Bureau in an international design application designating the United States shall be in the amount specified on the Web site of WIPO, currently available at *http://www.wipo.int/hague,* at the time the fee is paid. The option for applicants to pay the issue fee through the International Bureau is provided for in Hague Agreement Rule 12(3)(c) and is in lieu of paying the issue fee under § 1.18(b)(1). Article 7(2) permits a Contracting Party to declare that the prescribed designation fee shall be replaced by an individual designation fee, whose amounts can be changed in further declarations. The International Bureau accepts payment only in Swiss currency (see Hague Agreement Rule 28(1)) and all fee amounts specified on the WIPO Web site are in Swiss currency.

Section 1.25: Section 1.25(b) is amended to provide that international design application fees may be charged to a deposit account. International design application fees are set forth in § 1.1031. Section 1.25(b) is also amended to provide that a general authorization to charge fees in an international design application set forth in § 1.1031 will only be effective for the transmittal fee (§ 1.1031(a)). The international fees set forth in § 1.1031, other than the transmittal fee set forth in § 1.1031(a), are not required to be paid to the Office as an office of indirect filing. *See* § 1.1031(d).

Section 1.27: The introductory text of § 1.27(c)(3) is amended to provide that the payment, by any party, of the small entity first part of the individual designation fee for the United States to the International Bureau will be treated as a written assertion of entitlement to small entity status. The change to § 1.27(c)(3) will permit international design applicants to establish small entity status for the purpose of the United States by payment to the International Bureau of the small entity first part of the individual designation fee for the United States.

Section 1.29: Section 1.29(e) is amended to provide that a micro entity certification filed in an international design application may be signed by a person authorized to represent the applicant under § 1.1041 before the International Bureau where the micro entity certification is filed with the International Bureau.

Section 1.32: The introductory text of § 1.32(d) is amended to add a reference to benefit claims under 35 U.S.C. 386(c), as provided by the PLTIA. 126 Stat. 1529–30. Thus, a power of attorney from a prior national application for which benefit is claimed under 35 U.S.C. 386(c) in a continuing international design application may have effect in the continuing application if a copy of the power of attorney from the prior application is filed in the continuing application, subject to the conditions set forth in § 1.32(d).

Section 1.41: Section 1.41(f) is added to set forth the inventorship in an international design application designating the United States. Specifically, the inventorship of an international design application designating the United States is the creator or creators set forth in the publication of the international registration under Hague Agreement Article 10(3). Section 1.41(f) further provides that any correction of inventorship must be pursuant to § 1.48.

Section 1.46: The introductory text of § 1.46(b) is amended to provide that if an application entering the national stage under 35 U.S.C. 371 or a nonprovisional international design application is applied for by a person other than the inventor under § 1.46(a) (*i.e.,* the assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter, as provided under 35 U.S.C. 118), that person must have been identified as the applicant for the United States in the international stage of the international application or as the applicant in the publication of the international registration under Hague Agreement Article 10(3). The amendment does not change the current practice with respect to national stage applications under 35 U.S.C. 371, where a person seeking to become an applicant under § 1.46 in the national phase was not named as an applicant for the United States in the international phase. In such case, that person must comply with the requirements under § 1.46(c), including the requirements of §§ 3.71 and 3.73, to be an applicant in the national phase. The amendment treats international design applications in the same manner as international applications under the PCT. *See* discussion of § 1.1011(b), *infra* (regarding who may be an applicant for an international design application designating the United States).

Section 1.46(c) is amended to provide for the correction or update in the name of the applicant in paragraph (c)(1) and a change in the applicant in paragraph (c)(2). Section 1.46(c)(1) corresponds to the first sentence of paragraph (c) of former § 1.46 and further provides that a change in the name of the applicant under § 1.46 recorded pursuant to Hague Agreement Article 16(1)(ii) will be effective to change the name of the applicant in a nonprovisional international design application. Article 16(1)(ii) provides for recording in the International Register by the International Bureau of a change in the name of the holder. Under Article 16(2), such recording has the same effect as if made in the office of each of the designated Contracting Parties. Thus, where the applicant in a nonprovisional international design application under § 1.46 is the holder of the international registration, correction or update of the applicant's name may be made through the mechanism under Article 16(1)(ii). Section 1.46(c)(1) also clarifies that a correction or update of the name of the applicant using an application data sheet must be made in accordance with § 1.76(c)(2), which requires that the information that is changed be indicated by underlining, strike-though, or brackets, as appropriate.

Section 1.46(c)(2) corresponds to the second sentence of paragraph (c) of former § 1.46 and provides that any request to change the applicant under § 1.46 after an original applicant has been specified must include an application data sheet under § 1.76 specifying the applicant in the applicant information section (§ 1.76(b)(7)) in accordance with § 1.76(c)(2) and comply with §§ 3.71 and 3.73. The language of § 1.46(c)(2) is amended to clarify that any change in the applicant under § 1.46 once an applicant has been specified requires identification of the new applicant in an application data sheet in accordance with § 1.76(c)(2) and comply with §§ 3.71 and 3.73. There was some confusion with respect to the proper way to change the applicant where (1) the inventor was the original applicant or (2) the applicant is being changed from a second (or subsequent) applicant to a new applicant. Specifying the applicant in an application filed under 35 U.S.C. 111 may be accomplished

either by the person who has made the application or by the Office where the applicant has not been specified by the time the filing receipt is issued. The Office previously indicated that the inventors may be considered the applicant where an applicant has not otherwise been specified and that compliance with §§ 3.71 and 3.73 is required for any change in the applicant from the inventors. *See Changes To Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act,* 77 FR 48775, 48785 (Aug. 14, 2012). In an application entering the national stage under 35 U.S.C. 371, the original applicant specified is the person identified as the applicant for the United States in the international stage of the international application. In a nonprovisional international design application, the original applicant specified is the person identified as the applicant in the publication of the international registration under Hague Agreement Article 10(3). Section 1.46 does not govern changes in inventorship. Rather, any request to add or delete an inventor, or to correct or update the name of an inventor, must be made in accordance with the provisions of § 1.48.

Section 1.53: The introductory text of § 1.53(b) is amended to include a reference to 35 U.S.C. 386(c), as added by the PLTIA. Thus, § 1.53(b) provides that a continuing application, which may be a continuation, divisional, or continuation-in-part application, may be filed under the conditions specified in 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78.

Section 1.53(c)(4) is amended to include a reference to 35 U.S.C. 386(a) and 386(c), as added by the PLTIA, thus making clear that a provisional application is not entitled to a right of priority or to the benefit of the filing date of an international design application.

Section 1.53(d)(1)(ii) is amended to provide that a continued prosecution application (''CPA'') of a prior nonprovisional application may be filed where the prior nonprovisional application is a design application, but not an international design application, that is complete as defined by § 1.51(b), except for the inventor's oath or declaration if the application is filed on or after September 16, 2012, and the prior nonprovisional application contains an application data sheet meeting the conditions specified in § 1.53(f)(3)(i).

Section 1.55: Section 1.55 is revised to provide for a right of priority under 35 U.S.C. 386 with respect to international design applications and for other matters, as discussed below. In addition, as to the applicability dates for certain provisions in existing rules, this final rule makes those applicability dates more accessible by stating them directly in the body of those rules. In particular, the requirements of § 1.55 set forth in the following final rules have been consolidated in this final rule: *Changes To Implement the Patent Law Treaty,* 78 FR 62368, 62399 (Oct. 21, 2013) (changes to § 1.55 made therein applicable to any patent application filed before, on, or after December 18, 2013, except for the changes to § 1.55(f), which is applicable to patent applications filed under 35 U.S.C. 111 on or after December 18, 2013, and international patent applications in which the national stage commenced under 35 U.S.C. 371 on or after December 18, 2013); *Changes To Implement the First Inventor To File Provisions of the Leahy-Smith America Invents Act,* 78 FR 11024 (Feb. 14, 2013) (applicable to any application filed under 35 U.S.C. 111 or 363 on or after March 16, 2013); *Changes To Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act,* 77 FR 48776 (Aug. 14, 2012) (applicable to patent applications filed under 35 U.S.C. 111(a) or 363 on or after September 16, 2012); and *Changes to Implement Eighteen-Month Publication of Patent Applications,* 65 FR 57024 (Sept. 20, 2000) (applicable to patent applications filed on or after November 29, 2000).

Section 1.55(a) is amended to provide that an applicant in a nonprovisional application may claim priority to one or more prior foreign applications under the conditions specified in 35 U.S.C. 386(a) and (b) and this section.

Section 1.55(b) is amended to clarify which application is the ''subsequent application'' for purposes of § 1.55. Section 1.55(b) provides that the nonprovisional application must be: Filed not later than twelve months (six months in the case of a design application) after the date on which the foreign application was filed, subject to paragraph (c) of the section (a subsequent application); or entitled to claim the benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) of a subsequent application that was filed within the period set forth in paragraph (b)(1) of the section. Thus, the subsequent application in either § 1.55(b)(1) or (b)(2) is the application required to be filed within the period set forth in § 1.55(b)(1). For purposes of § 1.55(b)(2), the subsequent application may be a nonprovisional application, an international application designating the United States, or international design application designating the United States.

Section 1.55(c) is amended to provide for restoration of priority claims under 35 U.S.C. 386(a) or (b). Restoration of the right of priority is provided for under 35 U.S.C. 119(a), as amended by title II of the PLTIA. 126 Stat. 1534. Section 1.55 was previously amended to implement the provisions of 35 U.S.C. 119, as amended by title II of the PLTIA. *See Changes To Implement the Patent Law Treaty,* 78 FR 62368, 62399 (Oct. 21, 2013). Under 35 U.S.C. 386(a) and (b), entitlement to priority to a prior application shall be ''[i]n accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172 . . . .'' Consequently, § 1.55(c) is amended in this final rule to provide that restoration of the right of priority is available for priority claims under 35 U.S.C. 386(a) and (b).

Section 1.55(c) is also amended to provide that a petition to restore the right of priority filed on or after May 13, 2015 (the effective date of this final rule) must be filed in the subsequent application or in the earliest nonprovisional application claiming benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) to the subsequent application, if such subsequent application is not a nonprovisional application. The Office has received inquiries from the public asking in which application the petition to restore the right of priority under § 1.55(c) must be filed where there is a chain of applications claiming benefit under 35 U.S.C. 120, 121, or 365(c) to the application for which filing was unintentionally delayed. The amendment to § 1.55(c) is intended to provide clarification by requiring that, on or after May 13, 2015, a petition to restore the right of priority under this paragraph be filed in the subsequent application or in the earliest nonprovisional application claiming benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) to the subsequent application, if such subsequent application is not a nonprovisional application. If a petition under § 1.55(c) to restore the right of priority is granted, a further petition under § 1.55(c) is not required in an application entitled to claim the benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) of the subsequent application for which the right of priority was restored.

Requiring the filing of the petition under § 1.55(c) in the earliest nonprovisional application claiming benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) to the subsequent application, when the subsequent application is not a nonprovisional application, is

appropriate because the Office may not have an application file established for the subsequent application. This would occur, for example, where an international application designating the United States was filed in a foreign Receiving office and the applicant files a continuation of the international application under 35 U.S.C. 111(a) rather than entering the national phase under 35 U.S.C. 371. Nevertheless, the statement required under § 1.55(c)(3) must still relate to the unintentional delay in filing the subsequent application, *i.e.,* the international application, in such instance.

Section 1.55(e) is amended to provide that unless such claim is accepted in accordance with the provisions of § 1.55(e), any claim for priority under 35 U.S.C. 119(a) through (d) or (f), 365(a) or (b), or 386(a) or 386(b) not presented in the manner required by § 1.55(d) or (m) during pendency and within the time period provided by § 1.55(d) (if applicable) is considered to have been waived. Section 1.55(e) is also amended to provide for the acceptance of a delayed priority claim considered to have been waived under § 1.55 and to provide for acceptance of an unintentionally delayed priority claim under 35 U.S.C. 386(a) or 386(b).

35 U.S.C. 119(b), amended in section 4503 of the American Inventors Protection Act of 1999 (AIPA), provides in paragraph (b)(1) that ''[n]o application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.'' *See* Pub. L. 106–113, 113 Stat. 1501 (1999). 35 U.S.C. 119(b), amended under the AIPA, further provides, in paragraph (b)(2) that ''[t]he Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the requirement for payment of the fee specified in section 41(a)(7), to accept an unintentionally delayed claim under this section.'' *Id.* Section 4503 of the AIPA applies ''only to applications (including international applications designating the United States) filed on or after [November 29, 2000].'' *See Intellectual Property and High Technology Technical Amendments Act of 2002,* Public Law 107–273, 116 Stat. 1757. 35 U.S.C. 119(b)(2) was subsequently amended under title II of the PLTIA to provide for the payment of the fee specified in 35 U.S.C. 41(a)(7). 126 Stat. 1536. Pursuant to the authority under 35 U.S.C. 119(b)(2), the Office established procedures to accept an unintentionally delayed claim for priority in utility applications. *See Changes to Implement Eighteen-Month Publication of Patent Applications,* 65 FR 57024 (Sept. 20, 2000). However, no procedures were established for accepting an unintentionally delayed priority claim in a design application. The change to § 1.55(e) makes the petition procedure therein applicable to design applications, thus according design applicants the same remedy available to applicants in utility applications.

Section 1.55(f) is amended to provide for an exception under § 1.55(h) to the requirement for a certified copy of the prior foreign application. *See* discussion of § 1.55(h), *infra.*

Section 1.55(g) is amended to provide that the claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event, be filed within the pendency of the application, unless filed with a petition under § 1.55(e) or (f) or with a petition accompanied by the fee set forth in § 1.17(g), which includes a showing of good and sufficient cause for the delay in filing the certified copy of the foreign application in a design application. MPEP 216.01 provides for the submission of a request for certificate of correction under § 1.323 along with, where applicable, a petition under § 1.55(e), to perfect a claim for priority under 35 U.S.C. 119(a)–(d) and (f) in a patent under certain conditions, including the case where the certified copy was not in the application that issued as a patent but was filed in a parent application. Where the conditions set forth in MPEP 216.01 do not apply, perfection of the claim for foreign priority generally required the filing of a reissue application. *See* MPEP 1417. Section 1.55(g), as amended in this final rule, eliminates the need in many instances to file a reissue application in order to perfect a claim for foreign priority by allowing the certified copy of the foreign application required under § 1.55 to be filed in the application with a petition under § 1.55(f) or as provided in § 1.55(g), together with the fee set forth in § 1.17(g), that includes a showing of good and sufficient cause for the delay in filing the certified copy of the foreign application. In addition, where a priority claim under § 1.55 was not timely made, § 1.55(g) as amended in this final rule allows the priority claim and certified copy required under § 1.55 to be filed pursuant to a petition under § 1.55(e) even if the application is not pending (*e.g.,* a patented application). Furthermore, where the priority claim required under § 1.55 was timely filed in the application but was not included on the patent because the requirement under § 1.55 for a certified copy was not satisfied, the patent may be corrected to include the priority claim via a certificate of correction under 35 U.S.C. 255 and § 1.323, accompanied by a grantable petition under § 1.55(f) or (g), without the need for a petition under § 1.55(e) to accept an unintentionally delayed priority claim.

Section 1.55(g) is also amended to remove the requirement for the processing fee set forth in § 1.17(i) where the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid. Section 1.55(g), however, retains the provision of former § 1.55(g) that if the claim for priority or the certified copy is filed after the date the issue fee is paid, the patent will not include the priority claim unless corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323.

Section 1.55(h) provides that the requirement in § 1.55(f) and (g) for a certified copy of the foreign application will be considered satisfied in a reissue application if the patent for which reissue is sought satisfies the requirement of this section for a certified copy of the foreign application and such patent is identified in the reissue application as containing the certified copy. Section 1.55(h) further provides that the requirement in paragraphs (f) and (g) of this section for a certified copy of the foreign application will also be considered satisfied in an application if a prior-filed nonprovisional application for which a benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) contains a certified copy of the foreign application and such prior-filed nonprovisional application is identified as containing a certified copy of the foreign application. The exception under § 1.55(h) to the requirement to provide the certified copy of the foreign application is in accord with long-standing Office policy. *See, e.g.,* MPEP 215(III) (9th ed., Mar. 2014).

Sections 1.55(i)–(l) in this final rule correspond to the provisions of paragraphs (h)–(k) of former § 1.55. Section 1.55(i)(4) is also amended, consistent with Office practice, to provide that the request under that paragraph may be filed with a petition under § 1.55(f). *See AIA Frequently Asked Questions,* Question FITF3500,

http://www.uspto.gov/aia_implementation/faqs_first_inventor.jsp. Section 1.55(j)(2) is amended to provide for a time period to submit the copy of the foreign application and separate cover sheet in a national stage application to include the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) (§ 1.491(a)) or four months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage. Section 1.55(j)(2) is also amended to provide for the submission of the copy of the foreign application and separate cover sheet with a petition under § 1.55(f). *Id.* Nonprovisional international design applications are also excluded from the transition provision of § 1.55(k), as such applications can only be filed on or after the date the treaty takes effect as to the United States.

Section 1.55(m) sets forth the time for filing a priority claim and certified copy of a foreign application in an international design application designating the United States. Section 1.55(m) provides that in an international design application designating the United States, the claim for priority may be made in accordance with the Hague Agreement and the Hague Agreement Regulations. Section 1.55(m) further provides that in a nonprovisional international design application, the priority claim, unless made in accordance with the Hague Agreement and the Hague Agreement Regulations, must be presented in an application data sheet (§ 1.76(b)(6)) identifying the foreign application for which priority is claimed by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. In a nonprovisional international design application, the priority claim and certified copy must be furnished in accordance with the time period and other conditions set forth in § 1.55(g).

Section 1.55(o) provides, in accordance with the effective date provision of title I of the PTLIA, that the right of priority under 35 U.S.C. 386(a) or (b) with respect to an international design application is applicable only to nonprovisional applications, international applications, and international design applications filed on or after May 13, 2015, and patents issuing thereon. 126 Stat. 1532.

Section 1.55(p) provides that the time periods set forth in this section are not extendable, but are subject to 35 U.S.C. 21(b) (and § 1.7(a)), PCT Rule 80.5, and Hague Agreement Rule 4(4). Section 1.55(p) in this final rule corresponds to the provisions contained in paragraphs (b) and (l) of former § 1.55 and further provide that the time periods are subject to Hague Agreement Rule 4(4). Rule 4(4) provides that if a period expires on a day on which the International Bureau or the office concerned is not open to the public, the period shall expire on the first subsequent day on which the International Bureau or the office concerned is open to the public. Section 101(a) of the PLTIA adds 35 U.S.C. 386(b), which provides: ''[i]n accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172 and the treaty and the Regulations, an international design application designating the United States shall be entitled to the right of priority based on a prior foreign application . . . .'' 126 Stat. at 1529. Thus, pursuant to 35 U.S.C. 386(b), the priority period in an international design application designating the United States is subject to Rule 4(4).

Section 1.57: Section 1.57(a)(4) is amended to change the reference from ''§ 1.55(h)'' to ''§ 1.55(i)'' in light of the changes to § 1.55 in this final rule. The introductory text of § 1.57(b) is amended to include a reference to priority and benefit claims to international design applications. Section 101(a) of the PLTIA adds 35 U.S.C. 386 to provide for a right of priority or benefit with respect to an international design application. 126 Stat. at 1529–30. Accordingly, the introductory text of § 1.57(b) is amended to provide for incorporation by reference to an inadvertently omitted portion of the specification or drawings based on a claim for priority under § 1.55 or benefit claim under § 1.78 to an international design application present upon filing. Section 1.57(b)(4) is also added to provide that any amendment to an international design application pursuant to § 1.57(b)(1) shall be effective only as to the United States and shall have no effect on the filing date of the application and that no request under § 1.57(b) to add the inadvertently omitted portion of the specification or drawings in an international design application will be acted upon by the Office prior to the international design application becoming a nonprovisional application. Section 1.57(b)(4) is similar to § 1.57(b)(2), which applies to international applications.

Section 1.63: Section 1.63(d)(1) is amended to add references to § 1.1021(d) and 35 U.S.C. 386(c) so as to provide that a newly executed oath or declaration under § 1.63, or substitute statement under § 1.64, is not required under §§ 1.51(b)(2) and 1.53(f), or under §§ 1.497 and 1.1021(d), for an inventor in a continuing application that claims the benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) in compliance with § 1.78 of an earlier-filed application, provided that an oath or declaration in compliance with this section, or substitute statement under § 1.64, was executed by or with respect to such inventor and was filed in the earlier-filed application and a copy of such oath, declaration, or substitute statement showing the signature or an indication thereon that it was executed is submitted in the continuing application. Title I of the PLTIA amends 35 U.S.C. 115(g)(1) (as amended by the Leahy-Smith America Invents Act) by adding a reference to benefit claims under 35 U.S.C. 386(c). *See* 126 Stat. 1531. The amendment to § 1.63(d)(1) is consistent with this statutory change.

Section 1.76: Section 1.76(a) is amended to provide for the filing of an application data sheet in a nonprovisional international design application and to include a reference to priority and benefit claims under 35 U.S.C. 386 with respect to international design applications. Section 1.76(b)(5) is amended to provide for domestic benefit information pertaining to benefit claims under 35 U.S.C. 386(c). Section 1.76(b)(6) is amended to provide that the foreign priority information section of the application data sheet may include the intellectual property authority rather than country of filing. This change is for consistency with the requirements of 35 U.S.C. 119(b) and § 1.55.

Section 1.78: Section 1.78 is amended, as discussed below, to provide for benefit claims under 35 U.S.C. 386(c) with respect to international design applications designating the United States. In addition, as to the applicability dates for certain provisions in existing rules, this final rule makes those applicability dates more accessible by stating them directly in the body of those rules. In particular, the requirements of § 1.78 set forth in the following final rules have been consolidated in this final rule: *Changes To Implement the Patent Law Treaty,* 78 FR 62368, 62399 (Oct. 21, 2013) (applicable to any patent application filed before, on, or after December 18, 2013); *Changes To Implement the First Inventor To File Provisions of the Leahy-Smith America Invents Act,* 78 FR 11024 (Feb. 14, 2013) (applicable to any application filed under 35 U.S.C. 111 or 363 on or after March 16, 2013); *Changes To Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act,* 77 FR 48776 (Aug. 14, 2012) (applicable to patent applications filed under 35 U.S.C. 111(a) or 363 on

or after September 16, 2012); and *Changes to Implement Eighteen-Month Publication of Patent Applications,* 65 FR 57024 (Sept. 20, 2000) (applicable to patent applications filed on or after November 29, 2000).

Section 1.78(a)(1) is amended to clarify which application is the ''subsequent application'' for purposes of § 1.78. Section 1.78(a)(1) provides that the nonprovisional application, other than for a design patent, or international application designating the United States must be: Filed not later than twelve months after the date on which the provisional application was filed, subject to paragraph (b) of the section (a subsequent application); or entitled to claim the benefit under 35 U.S.C. 120, 121, or 365(c) of a subsequent application that was filed within the period set forth in paragraph (a)(1)(i) of the section. Thus, the subsequent application in either § 1.78(a)(1)(i) or (a)(1)(ii) is the application required to be filed within the period set forth in § 1.78(a)(1)(i). For purposes of § 1.78(a)(1)(ii), the subsequent application may be a nonprovisional application or an international application designating the United States.

Section 1.78(b) is amended to provide, in paragraph (b)(1), that a petition to restore the benefit of a provisional application under this paragraph filed on or after May 13, 2015, must be filed in the subsequent application. A similar change was made to § 1.55. *See* discussion of § 1.55(c), *supra.* If a petition under § 1.78(b) to restore benefit of a provisional application is granted, a further petition under § 1.78(b) is not required in an application entitled to claim the benefit under 35 U.S.C. 120, 121, or 365(c) of the subsequent application for which benefit of the provisional application was restored.

The introductory text of § 1.78(d) is amended to provide for benefit claims under 35 U.S.C. 386(c) with respect to international design applications designating the United States. Section 1.78(d)(1)(ii) provides that the prior-filed application to which benefit is claimed may be an international design application entitled to a filing date in accordance with § 1.1023 and designating the United States.

Section 1.78(d)(2) is amended to provide that the reference required under this paragraph to a prior filed international design application designating the United States may identify the international design application by international registration number and filing date under § 1.1023. Where the international design application becomes a nonprovisional application, which occurs when the Office receives a copy of the international registration from the International Bureau pursuant to Article 10 of the Hague Agreement (*see* § 1.9), the required reference can identify the nonprovisional application number instead of the international registration number and filing date under § 1.1023. Identifying the prior international design application by the nonprovisional application number is preferable to the Office and simpler for applicants.

Section 1.78(d)(3) is amended to provide, in paragraph (d)(3)(i), that the reference required by 35 U.S.C. 120 and § 1.78(d)(2) must be submitted during the pendency of the later-filed application. Section 1.78(d)(3)(ii) sets forth the time period for submitting the reference required under 35 U.S.C. 120 and § 1.78(d)(2) in a later-filed application under 35 U.S.C. 111(a) (excluding design applications) and in a nonprovisional application entering the national stage from an international application under 35 U.S.C. 371 and substantially corresponds to the provisions contained in paragraph (d)(3) of former § 1.78. Section 1.78(d)(3)(iii) provides that, except as provided in § 1.78(e), the failure to timely submit the reference required by 35 U.S.C. 120 and § 1.78(d)(2) is considered a waiver of any benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) to the prior-filed application. The changes to § 1.78(d)(3) in this final rule would make the procedures under § 1.78(e) to accept an unintentionally delayed benefit claim applicable to design applications and thus accord applicants in design applications the same remedy for accepting an unintentionally delayed benefit claim that is available to applicants in utility applications. The establishment of such procedures is provided for in 35 U.S.C. 120, as amended in section 4503 of the AIPA. *See* discussion of § 1.55(e), *supra* (regarding acceptance of an unintentionally delay claim of priority in a design application).

Section 1.78(d)(6) is amended to exclude nonprovisional international design applications, as such applications can only be filed on or after the date the Hague Agreement takes effect as to the United States.

Section 1.78(d)(7) is added to provide that where benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) to an international application or an international design application, which designates but did not originate in the United States, the Office may require a certified copy of such application together with an English translation thereof if filed in another language. The authority to require a certified copy of an international design application that designates the United States but did not originate in the United States, and an English translation thereof, is provided in 35 U.S.C. 386(c). Similar authority with respect to international applications that designate the United States but do not originate in the United States is provided in 35 U.S.C. 365(c). Since international applications are published under PCT Article 21(2) and international design applications are published under Hague Agreement Article 10(3), the Office would not ordinarily require a certified copy of the international application or international design application pursuant to § 1.78(d)(7). Rather, the Office foresees use of § 1.78(d)(7) primarily in instances where the international application or international design application did not publish under the respective treaty or where there is a question as to the content of the disclosure of the application as of its filing date and the certified copy and any English translation are needed to determine entitlement to the benefit of the filing date of the international application or international design application in order to, for example, overcome a prior art reference.

Section 1.78(e) is amended to provide for acceptance of a delayed benefit claim under 35 U.S.C. 386(c) to a prior filed international application designating the United States pursuant to the petition procedure set forth therein.

Section 1.78(i) is added to provide that where a petition under paragraphs (b), (c), or (e) of this section is required in an international application that was not filed with the United States Receiving Office and is not a nonprovisional application, then such petition may be filed in the earliest nonprovisional application that claims benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) to the international application and will be treated as being filed in the international application. This provision is added because, in such instances, the Office does not have an application file established for the international application.

Section 1.78(j) provides, in accordance with the effective date provision of title I of the PTLIA, that benefit under 35 U.S.C. 386(c) with respect to an international design application is applicable only to nonprovisional applications, international applications, and international design applications filed

on or after May 13, 2015, and patents issuing thereon. 126 Stat. 1532.

Section 1.78(k) in this final rule corresponds to the provisions contained in paragraphs (h) and (a)(1) of former § 1.78 and further provides that the time periods are subject to Hague Agreement Rule 4(4).

Section 1.84: Section 1.84(a)(2) is amended to eliminate the requirement for a petition and fee set forth in § 1.17(h) to accept color drawings or photographs in design applications. The requirements that the design application include the number of sets of color drawings required by § 1.84(a)(2)(ii) and that the specification contain the reference to the color drawings or photographs set forth in § 1.84(a)(2)(iii) are maintained. The reference set forth in § 1.84(a)(2)(iii) provides notice to the public should the design application issue as a patent that the patented design is in color. In addition, the petition requirement is maintained for utility patent applications. Section 1.84(a)(2) is also amended to reflect current requirements for color drawings submitted through EFS-Web.

See Legal Framework for Electronic Filing System—Web (EFS-Web), 74 FR 55200, 55208 (Oct. 27, 2009) (''The requirement for three (3) sets of color drawings under 37 CFR 1.84(a)(2)(ii) is not applicable to color drawings submitted via EFS-Web. Therefore, only one set of such color drawings is necessary when filing via EFS-Web.'').

Section 1.84(y) is amended to include a cross reference to international design application reproductions in § 1.1026.

Section 1.85: Section 1.85(c) is amended to provide that if an amended drawing submitted under § 1.121(d) in a nonprovisional international design application does not comply with § 1.1026 at the time an application is allowed, the Office may notify the applicant in a notice of allowability and set a three-month period of time from the mail date of the notice of allowability within which the applicant must file a corrected drawing to avoid abandonment.

Section 1.97: Section 1.97(b) is amended by revising paragraphs (b)(3) and (b)(4), and adding a new paragraph (b)(5) to provide that an information disclosure statement may be filed within three months of the date of publication of the international registration under Hague Agreement Article 10(3) in an international design application. An information disclosure statement may also be submitted with the international design application. *See* Hague Agreement Rule 7(5)(g) (''The international application may be accompanied by a statement that identifies information known by the applicant to be material to the eligibility for protection of the industrial design concerned.'').

Section 1.105: The introductory text of § 1.105(a)(1) is amended to make a requirement for information under § 1.105 applicable to international design applications and to clarify that the requirement under § 1.105 is applicable to a reexamination proceeding ordered as a result of a supplemental examination proceeding.

Section 1.109: Section 1.109 is revised such that its definition of ''effective filing date'' is no longer restricted only to first inventor to file applications, but applies regardless of whether an application is a first to invent or a first inventor to file application. This does not change or affect the meaning of effective U.S. filing date when used in the MPEP to discuss the treatment of first to invent (pre-AIA) applications or the order of examination.

Section 1.109(a)(2) is also amended to include, for purposes of determining the ''effective filing date'' for a claimed invention in a patent or application for patent (other than a reissue application or reissued patent), a right of priority or benefit of an earlier filing date under 35 U.S.C. 386. Title I of the PLTIA amends 35 U.S.C. 100(i)(1)(B) (as amended by the Leahy-Smith America Invents Act) to include, within the meaning of ''effective filing date'' for a claimed invention in a patent or application, the filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority or the benefit of an earlier filing date under 35 U.S.C. 386. *See* 126 Stat. 1531. The amendment to § 1.109(a)(2) is consistent with the change to 35 U.S.C. 100(i)(1)(B) as amended by title I of the PLTIA.

Section 1.114: 35 U.S.C. 132(b), which provides for the request for continued examination practice set forth in § 1.114, was added to title 35, United States Code, in section 4403 of the American Inventors Protection Act of 1999 (AIPA). *See* Public Law 106–113, 113 Stat. 1501, 1501A–561 (1999). With respect to international applications, section 4405(b)(1) of the AIPA provides that 35 U.S.C. 132(b) applies to ''applications complying with section 371 of title 35, United States Code, that resulted from international applications filed on or after June 8, 1995.'' *See* 113 Stat. at 1501A–561. The Office recently revised its rules to permit applicants, including applicants in national stage applications under 35 U.S.C. 371, to postpone filing the inventor's oath or declaration until the application is otherwise in condition for allowance (subject to certain conditions). *See Changes to Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act,* 77 FR 48776 (Aug. 14, 2012) (final rule). An international application, however, does not comply with the requirements of 35 U.S.C. 371 until the application includes the inventor's oath or declaration. *See* 35 U.S.C. 371(c)(4); *see also* 77 FR at 48777, 48780, 48795 (explaining that the inventor's oath or declaration is still required for a PCT international application to comply with 35 U.S.C. 371, notwithstanding the changes permitting applicants to postpone filing the inventor's oath or declaration until after a PCT international application enters the national stage). Thus, the Office is revising § 1.114(e)(3) to clarify that the request for continued examination practice set forth in § 1.114 added in section 4403 of the AIPA does not apply to an international application until the international application complies with 35 U.S.C. 371 (which requires the filing of the inventor's oath or declaration in the international application, as well as, for example, the basic national fee and an English language translation of the international application if filed in another language).

Section 1.114(e) also is amended to provide that a request for continued examination may not be filed in an international design application, as there is no statutory provision to permit the filing of a request for continued examination in an international design application. Section 4405(b)(2) of the AIPA specifically excludes design applications under 35 U.S.C. chapter 16 from the provisions of 35 U.S.C. 132(b), and there is no provision in the AIPA, PLTIA, or other legislative act making 35 U.S.C. 132(b) applicable to international design applications.

Section 1.121: Section 1.121(d) is amended to provide for amendments to the drawings in a nonprovisional international design application and requires, *inter alia,* that any changes to the drawings be in compliance with §§ 1.84(c) and 1.1026.

Section 1.130: Section 1.130(d) is amended to refer to the definition of ''effective filing date'' in § 1.109, rather than the definition of ''effective filing date'' in 35 U.S.C. 100(i). The definition of ''effective filing date'' in § 1.109 and 35 U.S.C. 100(i) are the same, and other rules of practice refer to definition of ''effective filing date'' in § 1.109. *See* §§ 1.78, 1.110. Section 1.130(d) is also amended to include a reference to 35 U.S.C. 386(c), added by title I of the PLTIA, concerning domestic benefit claims with respect to international

design applications that designate the United States. Pursuant to 35 U.S.C. 386(c), an application must comply with the conditions and requirements of 35 U.S.C. 120, which include, *inter alia,* a requirement that the application contain a specific reference to the earlier application whose filing date is claimed.

Section 1.131: Section 1.131(d) is amended to refer to the definition of ''effective filing date'' in § 1.109, rather than the definition of ''effective filing date'' in 35 U.S.C. 100(i). The definition of ''effective filing date'' in § 1.109 and 35 U.S.C. 100(i) are the same, and other rules of practice refer to definition of ''effective filing date'' in § 1.109. *See* §§ 1.78, 1.110. Section 1.131(d) is also amended to include a reference to 35 U.S.C. 386(c), added by title I of the PLTIA, concerning domestic benefit claims with respect to international design applications that designate the United States.

Section 1.137: Section 1.137(d)(1)(ii) and (d)(2) are amended to include a reference to 35 U.S.C. 386(c) concerning domestic benefit claims with respect to international design applications that designate the United States.

Section 1.155: Section 1.155 is amended to provide for expedited examination of an international design application that designates the United States. To qualify for expedited examination, § 1.155(a)(1) provides that the international design application must have been published pursuant to Hague Agreement Article 10(3).

Section 1.175: The introductory text of § 1.175(f)(1) is amended to include a reference to 35 U.S.C. 386(c) concerning domestic benefit claims with respect to international design applications that designate the United States.

Section 1.211: Section 1.211(b) is amended to provide that an international design application under 35 U.S.C. chapter 38 shall not be published by the Office under § 1.211. International registrations are published by the International Bureau pursuant to Article 10(3) of the Hague Agreement. The international registration includes the data contained in the international design application and any reproduction of the industrial design. *See* Hague Agreement Rule 15(2).

Section 1.312: The Office has decided not to amend § 1.312 in this final rule. Pursuant to Rule 29 of the Hague Agreement, where the second part of the individual U.S. designation fee (*i.e.,* the issue fee) is paid to the International Bureau, the International Bureau is to ''immediately upon its receipt'' credit payment of such fee to the Office. The proposed rule would create an administrative burden in international design applications where the issue fee was paid to the International Bureau in order to determine the appropriate date to be used for amendment entry purposes. The Office may reconsider the need for such a provision after it gains more experience with the crediting of fees by the International Bureau to the Office.

A new subpart I is added to provide for international and national processing of international design applications.

Section 1.1001: Section 1.1001 is added to include definitions of terms used in subpart I.

Section 1.1002: Section 1.1002 is added to indicate the major functions of the USPTO as an office of indirect filing. These include: (1) Receiving and according a receipt date to international design applications; (2) collecting and, when required, transmitting fees for processing international design applications; (3) determining compliance with applicable requirements of part 5 of chapter I of title 37 of the CFR; and (4) transmitting an international design application to the International Bureau, unless prescriptions concerning national security prevent the application from being transmitted.

Section 1.1003: Section 1.1003 is added to indicate the major functions of the USPTO as a designated office. These include: (1) Accepting for national examination international design applications that satisfy the requirements of the Hague Agreement and Regulations; (2) performing an examination of the international design application in accordance with 35 U.S.C. chapter 16; and (3) communicating the results of examination to the International Bureau.

Section 1.1004: Section 1.1004 is added to indicate the major functions of the International Bureau. These include: (1) Receiving international design applications directly from applicants and indirectly from an office of indirect filing; (2) collecting required fees and crediting designation fees to the accounts of the Contracting Parties concerned; (3) reviewing international design applications for compliance with prescribed requirements; (4) translating international design applications into the required languages for recordation and publication; (5) registering the international design in the International Register where the international design application complies with the applicable requirements; (6) publishing international registrations in the International Designs Bulletin; and (7) sending copies of the publication of the international registration to each designated office.

Section 1.1005: Section 1.1005 is added, pursuant to the Paperwork Reduction Act of 1995, to display the currently valid Office of Management and Budget control number for the collection of information in 37 CFR part 1, subpart I. Section 1.1005(a) provides that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the collection of information in this subpart has been reviewed and approved by the Office of Management and Budget under control number 0651–0075. Section 1.1005(b) provides that notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget control number. Section 1.1005(b) further provides that § 1.1005 constitutes the display required by 44 U.S.C. 3512(a) and 5 CFR 1320.5(b)(2)(i) for the collection of information under Office of Management and Budget control number 0651–0075.

Section 1.1011: Section 1.1011(a) is added to specify who may file an international design application through the USPTO. Under Article 3, any person that is a national of a State that is a Contracting Party or a State member of an intergovernmental organization that is a Contracting Party, or that has a domicile, a habitual residence, or a real and effective industrial or commercial establishment in the territory of a Contracting Party, shall be entitled to file an international application. Under Article 4(1), the international application may be filed, at the option of the applicant, either directly with the International Bureau or through the office of the applicant's Contracting Party (*i.e.,* an office of indirect filing). Title I of the PLTIA adds 35 U.S.C. 382(a), which provides: ''[a]ny person who is a national of the United States, or has a domicile, a habitual residence, or a real and effective industrial or commercial establishment in the United States, may file an international design application by submitting to the Patent and Trademark Office an application in such form, together with such fees, as may be prescribed by the Director.'' 126 Stat. at 1528. In accordance with 35 U.S.C. 382(a) and Articles 3 and 4(1), § 1.1011(a) specifies that only persons who are nationals of the United States or who have a domicile, a habitual residence, or a real and effective industrial or commercial establishment

in the territory of the United States may file international design applications through the United States Patent and Trademark Office.

Section 1.1011(b) is added to provide that, although the USPTO will accept international design applications filed by any person referred to in § 1.1011(a), an international design application designating the United States may be refused by the Office as a designated office if the applicant is not a person qualified under 35 U.S.C. chapter 11 to be an applicant. The PLTIA does not distinguish a person qualified to be an applicant for an international design application designating the United States from a person qualified to be an applicant in a national design application under 35 U.S.C. 171–173. *See* section 101(a) of the PLTIA, which adds: 35 U.S.C. 389(b) (''All questions of substance and, unless otherwise required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16.''); 35 U.S.C. 382(c) (''Except as otherwise provided in this chapter, the provisions of chapter 16 shall apply.''); and 35 U.S.C. 383 (''In addition to any requirements pursuant to chapter 16, the international design application shall contain. . . .''). 126 Stat. at 1528–30.

Section 1.1012: Section 1.1012 is added to provide that, in order to file an international design application through the United States Patent and Trademark Office as an office of indirect filing, the United States must be applicant's Contracting Party. Pursuant to Article 4, an international design application may be filed through the office of the ''applicant's Contracting Party.'' The term ''applicant's Contracting Party'' is defined in Article 1(xiv) as ''the Contracting Party or one of the Contracting Parties from which the applicant derives its entitlement to file an international application by virtue of satisfying, in relation to that Contracting Party, at least one of the conditions specified in Article 3; where there are two or more Contracting Parties from which the applicant may, under Article 3, derive its entitlement to file an international application, 'applicant's Contracting Party' means the one which, among those Contracting Parties, is indicated as such in the international application.'' The indication of applicant's Contracting Party may be made in Box 4 of the application for international registration form (DM/1 form).

Section 1.1021: Section 1.1021 is added to specify the contents of the international design application.

Section 1.1021(a) specifies the mandatory contents of an international design application. The international design application must be in English, French, or Spanish. In addition, the application shall contain or be accompanied by: (1) A request for international registration under the Hague Agreement (Article 5(1)(i)); (2) the prescribed data concerning the applicant (Article 5(1)(ii) and Rule 7(3)(i) and (ii)); (3) the prescribed number of copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international design application, presented in the prescribed manner; however, where the industrial design is two-dimensional and a request for deferment of publication is made in accordance with Article 5(5), the international design application may, instead of containing reproductions, be accompanied by the prescribed number of specimens of the industrial design (Article 5(1)(iii)); (4) an indication of the product or products that constitute the industrial design or in relation to which the industrial design is to be used, as prescribed (Article 5(1)(iv) and Rule 7(3)(iv)); (5) an indication of the designated Contracting Parties (Article 5(1)(v)); (6) the prescribed fees (Article 5(1)(vi) and Rule 12(1)); (7) the Contracting Party or Parties in respect of which the applicant fulfills the conditions to be the holder of an international registration (Rule 7(3)(iii)); (8) the number of industrial designs included in the international application, which may not exceed 100, and the number of reproductions or specimens of the industrial designs accompanying the international application (Rule 7(3)(v)); (9) the amount of the fees being paid and the method of payment or instructions to debit the required amount of fees to an account opened with the International Bureau and the identification of the party effecting the payment or giving the instructions (Rule 7(3)(vii)); and (10) an indication of applicant's Contracting Party as required under Rule 7(4)(a).

Section 1.1021(b) sets forth additional mandatory contents that may be required by certain Contracting Parties. These include: (1) Elements referred to in Article 5(2)(b) required for a filing date in the designated Contracting Party for which a declaration was made by that Contracting Party; and (2) a statement, document, oath, or declaration required pursuant to Rule 8(1) by a designated Contracting Party. The elements that may be required under Article 5(2)(b) are: (i) Indications concerning the identity of the creator; (ii) a brief description of the reproduction or of the characteristic features of the industrial design; and (iii) a claim.

Section 1.1021(c) identifies optional contents that the international design application may contain. These include: (1) Two or more industrial designs, subject to the prescribed conditions (Article 5(4) and Rule 7(7)); (2) a request for deferment of publication (Article 5(5) and Rule 7(5)(e)) or a request for immediate publication (Rule 17); (3) an element referred to in item (i) or (ii) of Article 5(2)(b) of the Hague Agreement or in Article 8(4)(a) of the 1960 Act even where that element is not required in consequence of a notification in accordance with Article 5(2)(a) of the Hague Agreement or in consequence of a requirement under Article 8(4)(a) of the 1960 Act (Rule 7(5)(a)); (4) the name and address of applicant's representative, as prescribed (Rule 7(5)(b)); (5) a claim of priority of one or more earlier filed applications in accordance with Article 6 and Rule 7(5)(c); (6) a declaration, for purposes of Article 11 of the Paris Convention, that the product or products that constitute the industrial design, or in which the industrial design is incorporated, have been shown at an official or officially recognized international exhibition, together with the place where the exhibition was held and the date on which the product or products were first exhibited there and, where less than all the industrial designs contained in the international application are concerned, the indication of those industrial designs to which the declaration relates or does not relate (Rule 7(5)(d)); (7) any declaration, statement, or other relevant indication as may be specified in the Administrative Instructions (Rule 7(5)(f)); (8) a statement that identifies information known by the applicant to be material to the eligibility for protection of the industrial design concerned (Rule 7(5)(g)); and (9) a proposed translation of any text matter contained in the international application for purposes of recording and publication (Rule 6(4)).

Section 1.1021(d) sets forth additional required contents for an international design application that designates the United States. Section 1.1021(d) provides that, in addition to the mandatory requirements set forth in § 1.1021(a), an international design application that designates the United States shall contain or be accompanied by: (1) A claim (§§ 1.1021(b)(1)(iii) and 1.1025); (2) indications concerning the

identity of the creator (*i.e.,* the inventor, *see* § 1.9(d)) in accordance with Rule 11(1); and (3) the inventor's oath or declaration (§§ 1.63 and 1.64). Section 1.1021(d)(3) further provides that the requirements in §§ 1.63(b) and 1.64(b)(4) to identify each inventor by his or her legal name, mailing address, and residence, if an inventor lives at a location which is different from the mailing address, and the requirement in § 1.64(b)(2) to identify the residence and mailing address of the person signing the substitute statement, will be considered satisfied by the presentation of such information in the international design application prior to international registration.

Under Article 5(2), a Contracting Party may require an international design application to contain certain additional elements, where the law of that Contracting Party, at the time it becomes a party to the Hague Agreement, requires the application to contain such elements to be accorded a filing date. The elements set forth in Article 5(2) are: (1) Indications concerning the identity of the creator of the industrial design; (2) a brief description of the reproduction or of the characteristic features of the industrial design; and (3) a claim. Article 5(2) permits a Contracting Party to notify the Director General of the elements required in order for the application to be accorded a filing date.

A claim is a filing date requirement for design applications in the United States. While title II of the PLTIA, in implementing the Patent Law Treaty, eliminated the requirement for a claim as a filing date requirement in utility applications, it did not eliminate the requirement for a claim as a filing date requirement for design applications. *See* section 202 of the PLTIA (amending 35 U.S.C. 171 to provide that ''[t]he filing date of an application for patent for design shall be the date on which the specification as prescribed by [35 U.S.C.] 112 and any required drawings are filed''). 126 Stat. 1535. The specific wording of the claim shall be as prescribed in § 1.1025. *Id.* Consequently, an international design application that designates the United States but does not contain a claim will not be registered by the International Bureau in the international register and thus will not be entitled to a filing date in the United States. *See* 35 U.S.C. 384; Article 10(2). In such case, the International Bureau will invite the applicant to submit the claim within a prescribed time limit and will accord a date of international registration as of the date of receipt of the claim (assuming there are no other filing date defects). *See* Article 10(2)(b). Failure to timely submit the claim in response to the invitation by the International Bureau will result in the application being deemed not to contain the designation of the United States. *See* Article 8(2)(b).

Section 1.1021(d) also requires an international design application designating the United States to contain indications concerning the identity of the inventor (*i.e.,* creator) of the industrial design and the inventor's oath or declaration (§§ 1.63 or 1.64). The identity of the inventor and the inventor's oath or declaration are requirements applicable to design applications under 35 U.S.C. chapter 16. *See, e.g.,* 35 U.S.C. 115; 35 U.S.C. 101. The PLTIA provides for parity in the treatment of international design applications designating the United States with design applications under 35 U.S.C. chapter 16, except where otherwise provided by the PLTIA, Hague Agreement, or Regulations. *See, e.g.,* 35 U.S.C. 389(b) (''All questions of substance and, unless otherwise required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16.''); 35 U.S.C. 382(c) (''Except as otherwise provided in this chapter, the provisions of chapter 16 shall apply.''); 35 U.S.C. 383 (''In addition to any requirements pursuant to chapter 16, the international design application shall contain. . . .''). 126 Stat. at 1528–30. *See also* discussion of Hague Agreement Rule 8, *supra.*

Section 1.1022: Section 1.1022 is added to specify form and signature requirements for international design applications. Section 1.1022(a) provides that the international design application shall be presented on the official form. *See* Hague Agreement Rule 7(1). The term ''official form'' is defined in Hague Agreement Rule 1(vi) to mean ''a form established by the International Bureau or an electronic interface made available by the International Bureau on the Web site of the Organization, or any form or electronic interface having the same contents and format.'' Section 1.1022(b) provides that the international design application shall be signed by the applicant. *See* Rule 7(1).

Section 1.1023: The filing date of an international design application in the United States is set forth in 35 U.S.C. 384, added by section 101 of the PLTIA, which provides ''[s]ubject to subsection (b), the filing date of an international design application in the United States shall be the effective registration date.'' 126 Stat. at 1529. The term ''effective registration date'' is defined in 35 U.S.C. 381(a)(5) as ''the date of international registration determined by the International Bureau under the treaty.'' 126 Stat. at 1528. Accordingly, § 1.1023(a) is added to set forth that the filing date of an international design application in the United States is the date of international registration determined by the International Bureau, subject to review under § 1.1023(b).

Section 1.1023(b) is added to set forth a procedure to review the filing date of an international design application. Pursuant to 35 U.S.C. 384(b), ''[t]he Director may establish procedures, including the payment of a surcharge, to review the filing date under this section. Such review may result in a determination that the application has a filing date in the United States other than the effective registration date.'' 126 Stat. at 1529. Accordingly, § 1.1023(b) provides that, where the applicant believes the international design application is entitled under the Hague Agreement to a filing date in the United States other than the date of international registration, the applicant may petition the Director to accord the international design application a filing date in the United States other than the date of international registration. Section 1.1023(b) requires that the petition be accompanied by the fee set forth in § 1.17(f) and include a showing to the satisfaction of the Director that the international design application is entitled to such filing date.

Section 1.1024: Section 1.1024 is added to provide that an international design application designating the United States must include a specification as prescribed by 35 U.S.C. 112 and preferably include a brief description of the reproduction pursuant to Rule 7(5)(a) describing the view or views of the reproductions. Pursuant to Article 5(2), a Contracting Party may require ''a brief description of the reproduction or of the characteristic features of the industrial design that is the subject of that application'' where such is a filing date requirement under its national law. *See* Article 5(2)(b)(ii). While the ''brief description of the reproduction or of the characteristic features of the industrial design'' referred to in Article 5(2)(b)(ii) is not a filing date requirement in the United States, applicants should consider whether including additional written description of the invention is needed to comply with the requirements of 35 U.S.C. 112. Rule 7(5)(a) allows the applicant to include in the international design application the description referred to in Article 5(2)(b)(ii) even if

not required by a Contracting Party pursuant to Article 5(2).

In the United States, the requirements for a filing date for an application for design patent are set forth in 35 U.S.C. 171, as amended under section 202 of the PLTIA, which states in subsection (c): ''[t]he filing date of an application for patent for design shall be the date on which the specification as prescribed by [35 U.S.C.] 112 and any required drawings are filed.'' 126 Stat. 1535. Although a ''brief description of the reproduction or of the characteristic features of the industrial design'' is not a *per se* filing date requirement, it may be necessary to comply with 35 U.S.C. 112(a), which requires, *inter alia,* that the ''specification shall contain a written description of the invention.'' This written description requirement may be satisfied by the reproductions. *See In re Daniels,* 144 F.3d 1452, 1456, 46 USPQ2d 1788, 1790 (Fed. Cir. 1998) (''It is the drawings of the design patent that provide the description of the invention.''); *In re Klein,* 987 F.2d 1569, 1571, 26 USPQ2d 1133, 1134 (Fed. Cir. 1993) (''[U]sual[ly] in design applications, there is no description other than the drawings''); *Hupp* v. *Siroflex of America, Inc.,* 122 F.3d 1456, 1464, 43 USPQ2d 1887, 1893 (Fed. Cir. 1997) (''A design patent contains no written description; the drawings are the claims to the patented subject matter.''); *Ex parte Tayama,* 24 USPQ2d 1614, 1617 (Bd. Pat. App. & Int'f 1992) (''[D]esign applications must meet the requirements of 35 U.S.C. Section 112, first paragraph. While this *ordinarily* requires little if any detailed description, some design applications may require a disclosure as detailed as that in a complex utility application. There is no 'per se' rule with respect to the extent of the disclosure necessary in a design application. The adequacy of the disclosure must be determined on a case-by-case basis.''). The Office therefore encourages the inclusion in international design applications of a brief description of the reproduction, pursuant to Rule 7(5)(a), that describes the view or views of the reproductions, as may be required for design applications filed under 35 U.S.C. chapter 16. *See, e.g.,* § 1.153(b) (''No description, other than a reference to the drawing, is ordinarily required. . . .); § 1.154(b) (''The specification should include . . . 4) Description of the figure or figures of the drawing''); and MPEP 1503.01(II) (''Descriptions of the figures are not required to be written in any particular format, however, if they do not describe the views of the drawing clearly and accurately, the examiner should object to the unclear and/or inaccurate descriptions and suggest language which is more clearly descriptive of the views.''). Such figure descriptions are helpful for examination and may, in some cases, avoid rejections under 35 U.S.C. 112. Furthermore, a description of the view or views of the reproductions will be required by the Office in a nonprovisional international design application if not furnished under Rule 7(5)(a). *See* discussion of § 1.1067, *infra.*

Thus, § 1.1024 is added to provide that an international design application designating the United States must include a specification as prescribed by 35 U.S.C. 112, and should preferably include a brief description of the reproduction pursuant to Rule 7(5)(a) describing the view or views of the reproductions.

The Office notes that Article 5(2)(b)(ii) and Rule 11(2) refer to a description of ''characteristic features'' of the industrial design that may be required by some Contracting Parties. A characteristic features statement is not required under U.S. national law. Applicants are cautioned that a characteristic features statement may serve to later limit the claim in the United States. *See McGrady* v. *Aspenglas Corp.,* 487 F. Supp. 859 (S.D.N.Y. 1980); MPEP 1503.01.

Section 1.1025: Section 1.1025 is added to set forth that the specific wording of the claim in an international design application designating the United States shall be in formal terms to the ornamental design for the article (specifying name of article) as shown, or as shown and described. Section 1.1025 also provides that more than one claim is neither required nor permitted for purposes of the United States. Under Rule 11(3), a declaration requiring a claim pursuant to Article 5(2) ''shall specify the exact wording of the required claim.''

Section 1.1026: Section 1.1026 is added to provide that reproductions shall comply with the requirements of Rule 9 and Part Four of the Administrative Instructions. Rule 9 sets forth the requirements for reproductions in international design applications, including the form and number of reproductions, and references the requirements of the Administration Instructions. Part Four of the Administrative Instructions sets forth requirements concerning the presentation of the reproductions (Section 401), representation of the industrial design (Section 402), disclaimer (Section 403), requirements for photographs and other graphic representations (Section 404), numbering of reproductions (Section 405), requirements for specimens (Section 406), and relation with a principal industrial design or a principal application or registration (Section 407).

Section 1.1027: Section 1.1027 provides that, where a request for deferment of publication has been filed in respect of a two-dimensional industrial design, the international design application may include specimens of the design in accordance with Rule 10 and Part Four of the Administrative Instructions. Section 1.1027 further provides that specimens are not permitted in an international design application that designates the United States or any other Contracting Party that does not permit deferment of publication. Under the Hague Agreement, specimens are only permitted where a request for deferment of publication has been made. *See* Article 5(1)(iii); Rule 10(1). However, a request for deferment of publication is not permitted in an international design application that designates a Contracting Party that has made a declaration under Article 11(1)(b) that its applicable law does not provide for deferment of publication. *See* Article 11(3).

Section 1.1028: Section 1.1028 is added to make clear that an international design application may contain a request for deferment of publication, provided the application does not designate the United States or any other Contracting Party that does not permit deferment of publication. Where an international design application contains an improper request for deferment, the International Bureau will require correction pursuant to Article 11(3).

Section 1.1031: Section 1.1031 is added to provide for payment of the international design application fees.

Section 1.1031(a) provides that international design applications filed through the Office as an office of indirect filing are subject to payment of a transmittal fee in the amount of $120. Under the Hague Agreement, an office of indirect filing may require payment of a transmittal fee. *See* Article 4(2). Section 101(a) of the PLTIA adds 35 U.S.C. 382(b), which provides that the international design application and international fees shall be forwarded by the Office to the International Bureau ''upon payment of a transmittal fee.'' 126 Stat. at 1528. Accordingly, § 1.1031(a) provides for the payment of a transmittal fee. The transmittal fee is not being set pursuant to section 10(a) of the AIA. Rather, the Office is setting this fee pursuant to its authority under

35 U.S.C. 41(d)(2) in this rulemaking, which provides that fees for all processing, services, or materials relating to patents not specified in 35 U.S.C. 41 are to be set at amounts to recover the estimated average cost to the Office of such processing, services, or materials. *See* 35 U.S.C. 41(d)(2).

The transmittal fee for an international design application filed under the Hague Agreement through the USPTO as an office of indirect filing involves the following activities, which the Office considered in estimating the fiscal year 2012 costs: (1) Processing incoming paper ($2); (2) processing application fees ($7); (3) application indexing/scanning ($65); (4) routing classification/security screening ($4); (5) second-level security screening and licensing and review processing ($1); (6) initial bibliographic data entry ($17); (7) copying and mailing ($9); (8) performing processing section functions ($11); and (9) performing Hague file maintenance ($2).

Applying the ABI methodology discussed above, the Office has thus estimated the fiscal year 2012 unit cost to transmit an international design application and international fees to the International Bureau as the sum total of the aforementioned activities, resulting in a total unit cost of $118. Using the actual CPI–U increase for fiscal year 2013 and the estimated CPI–U for 2014 and 2015, the Office estimates the fiscal year 2015 unit cost to transmit the international design application and the international fees to the International Bureau is $124 ($118 multiplied by 1.051), which, when rounded to the nearest ten dollars, is a fee for transmittal of $120. Additional information concerning the Office's analysis of the estimated fiscal year 2012 costs for receiving and transmitting international design applications and international fees to the International Bureau is available upon request.

Section 1.1031(b) provides that the Schedule of Fees, a list of individual designation fee amounts, and a fee calculator to assist applicants in calculating the total amount of fees for filing an international design application may be viewed on the Web site of the WIPO, currently available at *http://www.wipo.int/hague.* Under the Hague Agreement, the International Bureau is responsible for collecting the required fees set forth in the Schedule of Fees annexed to the Regulations (Rule 27(1)) and the individual designation fees referred to in Rule 12(1)(a)(iii). Where the required fees have not been paid, the International Bureau will invite the applicant to pay the required fees to avoid abandonment of the application. *See* Article 8; Rule 14.

Section 1.1031(c) provides that the following fees required by the International Bureau may be paid either directly to the International Bureau or through the Office as an office of indirect filing in the amounts specified on the WIPO Web site described in § 1.1031(b): (1) The international application fees (Rule 12(1)); and (2) the fee for descriptions exceeding 100 words (Rule 11(2)). The fees referred to in Hague Agreement Rule 12(1) include a basic fee, standard designation fees, individual designation fees, and a publication fee. Rule 12(3)(b) states that the Rule 12(1) reference to individual designation fees is construed as a reference to only the first part of the individual designation fee for any Contracting Party with a designation fee comprised of two parts.

Section 1.1031(d) provides that the fees referred to in § 1.1031(c) may be paid directly to the International Bureau in Swiss currency. *See* Rule 27(2)(a). Administrative Instructions to the Hague Agreement set forth the various modes of payment accepted by the International Bureau. *See* Administrative Instruction 801. These include: (1) Payment by debit through an account established with the International Bureau; (2) payment into the Swiss postal check account or any of the specified bank accounts of the International Bureau; or (3) payment by credit card.

Section 1.1031(d) also provides for payment of the fees referred to in § 1.1031(c) through the Office as an office of indirect filing, provided such fees are paid no later than the date of payment of the transmittal fee required under § 1.1031(a). Any payment through the Office must be in U.S. dollars. Section 1.1031(d) also provides that applicants paying fees through the Office may be subject to a requirement by the International Bureau to pay additional amounts where the International Bureau has deemed the amount received as being deficient. This may occur, for example, where the conversion from U.S. dollars to Swiss currency results in the International Bureau receiving less than the prescribed amounts. Under Rule 28(1), ''[a]ll payments made under these Regulations to the International Bureau shall be in Swiss currency irrespective of the fact that, where the fees are paid through an Office, such Office may have collected those fees in another currency.'' Consequently, the fees collected by the Office for forwarding to the International Bureau must be converted to Swiss currency. If the converted amount at the time the Office transfers the fees to the International Bureau in Swiss currency is less than the amount required by the International Bureau, the International Bureau may invite the applicant to pay the deficiency. Any payment in response to the invitation must be made directly to the International Bureau within the period set in the invitation.

Section 1.1031(e) provides that payment of the fees referred to in Article 17 and Rule 24 for renewing an international registration (''renewal fees'') is not required to maintain a U.S. patent issuing on an international design application in force and that any renewal fees, if required, must be submitted directly to the International Bureau. Section 1.1031(e) further provides that any renewal fee submitted to the Office will not be transmitted to the International Bureau.

The final rules do not provide for a fee for renewing an international registration with respect to the United States. Article 7 provides for a designation fee for each designated Contracting Party. Article 7(1) provides for a ''prescribed'' designation fee (also referred to as ''standard'' designation fee, *see* Rule 11). However, Article 7(2) allows a Contracting Party to make a declaration replacing the prescribed designation fee with an individual designation fee ''in connection with any international application in which it is designated, and in connection with the renewal of any international registration resulting from such an international application.'' Pursuant to Article 7(2), the amount of the individual designation fee may be fixed by the Contracting Party ''for the initial term of protection and for each term of renewal or for the maximum period of protection allowed by the Contracting Party concerned.'' Article 7(2) further provides that the individual designation fee may not be higher than the equivalent of the amount that the office of a Contracting Party would be entitled to receive for a grant of protection for an equivalent period to the same number of designs.

Thus, while Article 7(2) permits a Contracting Party to fix an individual designation fee for renewing an international registration in respect of that Contracting Party, it does not require such fee. Rather, the individual designation fee fixed by the Contracting Party may be for the maximum period of protection allowed by the Contracting Party. Furthermore, the PLTIA does not require payment of a fee for renewing an international registration with respect to the United States. In addition, the PLTIA does not require renewal of the

international registration to obtain the maximum period of protection in the United States. *See, e.g.,* 35 U.S.C. 173 as amended by the PLTIA, 126 Stat. at 1532 (''Patents for designs shall be granted for the term of 15 years from the date of grant.''). Accordingly, the final rules do not provide a fee for renewing an international design application with respect to the United States.

The Office notes that Article 17(3) provides that any extension of the initial five-year term of protection accorded by an international registration is subject to renewal. However, the Hague Agreement allows a Contracting Party to provide greater protection under its national law than provided under the Hague Agreement. *See* Article 2(1) (''The provisions of this Act shall not affect the application of any greater protection which may be accorded by the law of a Contracting Party. . . .''). Furthermore, the records of the diplomatic conference adopting the Hague Agreement make clear that renewal of the international registration for a designated Contracting Party that requires payment of a single designation fee for the entire 15-year (or more) period of protection is not required to obtain the full period of protection in that Contracting Party. *See* WIPO, *Records of the Diplomatic Conference for the Adoption of a New Act of the Hague Agreement Concerning the International Deposit of Industrial Design (Geneva Act) June 16 to July 6, 1999,* 254, ¶ 15.08 (2002) (discussing Article 15 of the Basic Proposal presented to the diplomatic conference which, after minor amendment, became Article 17) (''It would be compatible with paragraphs (1) to (3) for a Contracting Party to stipulate a single 15-year (or more) period and to require payment of an initial individual designation fee for the whole period. In such case, protection would be maintained in its territory for that whole period, whether the international registration were renewed or not.'').

Section 1.1035: The Office has decided not to adopt § 1.1035 concerning priority in an international design application in this final rule. Section 1.1021(c)(5) in this final rule provides for the inclusion of, as an optional content item, a claim of priority of one or more earlier filed applications in accordance with Article 6 and Rule 7(5)(c) of the Hague Agreement. In addition, §§ 1.55 and 1.78 in this final rule provide for foreign priority and domestic benefit claims with respect to international design applications designating the United States. Accordingly, § 1.1035 is unnecessary.

Section 1.1041: Section 1.1041 is added to provide for representation in an international design application. Section 1.1041(a) provides that the applicant may appoint a representative before the International Bureau in accordance with Rule 3. With respect to who may be appointed to represent the applicant before the International Bureau, the Hague Agreement does not provide for any requirement as to professional qualification, nationality, or domicile. The appointment may be made in the international design application or in a separate communication. *See* Rule 3(2).

Requirements as to the appointment of a representative before the office of a Contracting Party are outside the scope of the Hague Agreement and are exclusively a matter for the Contracting Party. Accordingly, § 1.1041(b) is added to provide that applicants of international design applications may be represented before the Office as an office of indirect filing by a practitioner registered (§ 11.6) or granted limited recognition (§ 11.9(a) or (b)) to practice before the Office (§ 11.6). Section 1.1041(b) further provides that such practitioner may act pursuant to § 1.34 or pursuant to appointment by the applicant. The appointment must be in writing signed by the applicant, must give the practitioner power to act on behalf of the applicant, and must specify the name and registration number or limited recognition number of each practitioner. Section 1.1041(b) also provides that an appointment of a representative made in the international design application pursuant to Rule 3(2) that complies with the requirements of this paragraph will be effective as an appointment before the Office as an office of indirect filing. For purposes of representation before the Office during prosecution of an international design application that became a national application (*see* § 1.9(a)(1)), the regulations governing national applications shall apply. *See* § 1.1061(a).

Section 1.1042: Section 1.1042 is added to provide that the applicant may specify a correspondence address for correspondence sent by the Office as an office of indirect filing. Where no such address has been specified, the Office will use as the correspondence address the address of applicant's appointed representative (§ 1.1041) or, where no representative is appointed, the address as specified in Administrative Instruction 302.

Section 1.1045: Section 1.1045 is added to set forth the procedures for transmittal of international design applications to the International Bureau. Section 101(a) of the PLTIA adds 35 U.S.C. 382, which states, in subsection (b): ''[s]ubject to chapter 17, international design applications shall be forwarded by the Patent and Trademark Office to the International Bureau, upon payment of a transmittal fee.'' 126 Stat. at 1528. Rule 13(1) requires an office of indirect filing to notify the applicant and the International Bureau of the receipt date of an international design application and to notify the applicant that the international design application has been transmitted to the International Bureau. Accordingly, § 1.1045(a) is added to provide that, subject to § 1.1045(b) and payment of the transmittal fee set forth in § 1.1031(a), transmittal of the international design application to the International Bureau shall be made by the Office as provided by Rule 13(1). Section 1.1045(a) further provides that at the same time as it transmits the international design application to the International Bureau, the Office shall notify the International Bureau of the date on which it received the application and that the Office shall also notify the applicant of the date on which it received the international design application and the date on which it transmitted the application to the International Bureau.

Because transmittal of the international design application is subject to 35 U.S.C. chapter 17, § 1.1045(b) is added to provide that no copy of an international design application may be transmitted to the International Bureau, a foreign designated office, or other foreign authority by the Office or the applicant, unless the applicable requirements of part 5 of this chapter have been satisfied.

Under the Hague Agreement, formalities review of the international design application is performed by the International Bureau, not the office of indirect filing. The functions of the office of indirect filing are de minimis, *i.e.,* receiving and transmitting the international design application and international fees. There is no provision in the Hague Agreement for filing follow-on submissions with the office of indirect filing. Accordingly, § 1.1045(c) is added to provide that once transmittal of the international design application has been effected, except for matters properly before the USPTO as an office of indirect filing or as a designated office, all further correspondence concerning the application should be sent directly to the International Bureau, and that the Office will generally not forward communications to the International Bureau received after

transmittal of the application to the International Bureau. Section 1.1045(c) further provides that any reply to an invitation sent to the applicant by the International Bureau must be filed directly with the International Bureau, and not with the Office, to avoid abandonment or other loss of rights under Article 8.

Section 1.1051: Section 1.1051 is added to set forth conditions under which an applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application may be excused as to the United States upon a showing of unintentional delay. Section 101(a) of the PLTIA adds 35 U.S.C. 387, which gives the Director authority to prescribe such conditions, including the payment of the fee specified in 35 U.S.C. 41(a)(7), to excuse an applicant's failure to act within prescribed time limits in an international design application as to the United States where the delay was unintentional. 126 Stat. at 1530; *see* discussion of § 1.17(m), *supra.* Under § 1.1051(a), a petition to excuse applicant's failure to act within the prescribed time limits must be accompanied by: (1) A copy of any invitation sent from the International Bureau setting a prescribed time limit for which applicant failed to timely act; (2) the reply required under § 1.1051(c), unless previously filed; (3) the fee as set forth in § 1.17(m); (4) a certified copy of the originally filed international design application, unless a copy of the international design application was previously communicated to the Office from the International Bureau or the international design application was filed with the Office as an office of indirect filing; (5) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and (6) a terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section. The Director may require additional information where there is a question whether the delay was unintentional.

The requirements for a copy of the invitation sent from the International Bureau setting a prescribed time limit for which applicant failed to timely act and for a certified copy of the originally filed international design application (unless a copy of the international design application was previously communicated to the Office from the International Bureau or the international design application was filed with the Office as an office of indirect filing) are needed because the Office may not have a record of the international design application. For example, the Office may not have a record where the international design application was filed directly with the International Bureau and was not published.

Section 1.1051(b) provides that, to be considered timely, any request for reconsideration or review of a decision refusing to excuse the applicant's failure to act within prescribed time limits in connection with an international design application upon petition filed under § 1.1051(a) must be filed within two months of the decision refusing to excuse or within such time as set in the decision. Section 1.1051(b) further provides that, unless a decision indicates otherwise, the two-month time period may be extended under the provisions of § 1.136.

Section 1.1051(c) provides that the reply required may be: (1) The filing of a continuing application and, if the international design application has not been subject to international registration, a grantable petition under § 1.1023(b) to accord the international design application a filing date; or (2) a grantable petition under § 1.1052, where the international design application was filed with the Office as an office of indirect filing.

Under the Hague Agreement, the International Bureau reviews international design applications for compliance with the requirements of the treaty and Regulations. If these requirements have not been met, the International Bureau will invite the applicant to make the required corrections. *See* Hague Agreement Article 8(1). Depending on the correction required, failure to timely comply with the invitation will result in the application being considered abandoned or deemed not to contain the designation of the Contracting Party for which the deficiency relates. *See* Hague Agreement Article 8(2). The Hague Agreement does not provide for continued processing of an international design application that has been abandoned under Article 8 (or for processing the application for a particular Contracting Party after the designation of that Contracting Party has been deemed not to be contained in the application), based on the Office excusing the applicant's failure to timely comply with the invitation pursuant to 35 U.S.C. 387. For example, the Hague Agreement does not provide for forwarding by the International Bureau to the applicant a notification of refusal in an abandoned international application. Accordingly, the Office is providing relief under 35 U.S.C. 387 by permitting the applicant to file a continuing application claiming benefit to an international design application under the conditions of 35 U.S.C. 386(c) and 120. Upon grant of the petition under this section, applicant's delay will be excused for the purpose of establishing copendency or reinstatement of the U.S. designation in accordance with 35 U.S.C. 120, 386(c), and 388. The ability to file a continuing application is similarly provided in the rule governing the procedure for revival of an abandoned national application. *See* 37 CFR 1.137(c). Alternatively, § 1.1051(c) provides that the reply may be a grantable petition under § 1.1052 to convert the international design application to an application under 35 U.S.C. chapter 16.

Section 1.1051(d) provides that any petition under § 1.1051 must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period beginning on the due date for the reply for which applicant failed to timely act and ending on the date of filing of the reply required under paragraph (c) of the section and must also apply to any patent granted on a continuing design application that contains a specific reference under 35 U.S.C. 120, 121, 365(c), or 386(c) to the application for which relief under this section is sought. The requirement under § 1.1051(d) for a terminal disclaimer prevents an inappropriate length of patent term caused by applicant's delay and is consistent with the requirement under § 1.137(d) for a terminal disclaimer in a petition to revive an unintentionally abandoned design application.

Section 1.1052: Section 1.1052 is added to set forth a procedure for converting an international design application designating the United States to a design application under 35 U.S.C. chapter 16. Section 101(a) of the PLTIA adds 35 U.S.C. 384(a), the second sentence of which provides: ''[n]otwithstanding the provisions of this part, any international design application designating the United States that otherwise meets the requirements of chapter 16 may be treated as a design application under chapter 16.'' 126 Stat. at 1529. The requirements for a filing date for a design application under 35 U.S.C. chapter 16 are set forth in § 1.53(b). Accordingly, § 1.1052(a) provides that an international design application designating the United States filed with the Office as an office of indirect filing and meeting the requirements under § 1.53(b) for a filing date for an application for a design patent may, on

petition under this section, be converted to an application for a design patent under § 1.53(b) and accorded a filing date as provided therein.

Section 1.1052(a) further provides that the petition must be accompanied by the fee set forth in § 1.17(t) and be filed prior to publication of the international registration under Article 10(3). The requirement that a grantable petition be filed prior to publication under Article 10(3) is necessary in view of the timing requirements under the Hague Agreement to issue a notification of refusal and to avoid expending Office resources processing and examining the application under two different statutory schemes.

Section 1.1052(a) also provides that the conversion of an international design application to an application for a design patent under § 1.53(b) will not entitle applicant to a refund of the transmittal fee or any fee forwarded to the International Bureau, or the application of any such fee toward the filing fee, or any other fee, for the application for a design patent under § 1.53(b). In addition, § 1.1052(a) provides that the application for a design patent resulting from conversion of an international design application must also include the basic filing fee (§ 1.16(b)), the search fee (§ 1.16(l)), the examination fee (§ 1.16(p)), the inventor's oath or declaration (§§ 1.63 or 1.64), and a surcharge if required by § 1.16(f). These provisions are similar to those applicable to converting an application under 35 U.S.C. 111(b) to an application under 35 U.S.C. 111(a). *See* § 1.53(c)(3).

Section 1.1052(b) provides that an international design application will be converted to an application for a design patent under § 1.53(b) if a decision on petition under this section is granted prior to transmittal of the international design application to the International Bureau pursuant to § 1.1045. Otherwise, a decision granting a petition under this section will be effective to convert the international design application to an application for a design patent under § 1.53(b) only for purposes of the designation of the United States. Thus, pursuant to § 1.1052(b), if the Office grants the petition prior to transmittal of the international design application to the International Bureau, the Office will treat the international design application submission as an application for a design patent under § 1.53(b). Once transmittal of the application under § 1.1045 has occurred, the grant of the petition will only be effective as to the United States, and the International Bureau will continue to process the international design application under the provisions of the Hague Agreement. In such case, because the international design application will have been converted to an application for a design patent under § 1.53(b) with respect to the designation of the United States, the Office will, upon grant of the petition, treat the designation of the United States in the international design application as not being made. To avoid confusion and unnecessary processing, applicants should renounce the designation of the United States pursuant to Article 16 upon grant of the petition for conversion.

Section 1.1052 (c) provides that a petition under § 1.1052 will not be granted in an abandoned international design application absent a grantable petition under § 1.1051.

Section 1.1052(d) provides that an international design application converted under this section is subject to the regulations applicable to a design application filed under 35 U.S.C. chapter 16.

Sections 1.1061–1.1071 relate to national processing of an international design application designating the United States.

Section 1.1061: Section 1.1061(a) is added to provide that the rules relating to applications for patents for other inventions or discoveries are also applicable to international design applications designating the United States, except as otherwise provided in chapter I of title 37 of the CFR or required by the Articles or Regulations of the Hague Agreement. Section 1.1061(a) is similar to current § 1.151 with respect to design applications under 35 U.S.C. chapter 16 (''The rules relating to applications for patents for other inventions or discoveries are also applicable to applications for patents for designs except as otherwise provided.''). Section 101(a) of the PLTIA adds 35 U.S.C. 389(b) to provide that all questions of procedures regarding international design applications designating the United States shall be determined as in the case of applications filed under 35 U.S.C. chapter 16, except where otherwise required by the Hague Agreement and the Regulations (126 Stat. at 1530). Section 1.1061(b) is added to identify, consistent with the Hague Agreement and the Regulations, certain regulations that do not apply to international design applications.

Section 1.1062: Section 1.1062(a) is added to provide that the Office shall make an examination pursuant to title 35, United States Code, of an international design application designating the United States. Examination of international design applications designating the United States is mandated by 35 U.S.C. 389(a), which was added by section 101(a) of the PLTIA (126 Stat. at 1530). In accordance with Article 12(1) and 35 U.S.C. 389(b), the Office will not refuse an international design application under examination on grounds that requirements relating to the form or contents of the international design application provided for in the Hague Agreement or the Regulations or additional to, or different from, those requirements have not been satisfied. Accordingly, the Office does not consider it necessary to import the language of Article 12(1) into § 1.1061(a) as originally proposed.

The Office does not consider Article 12(1) to prohibit refusals based on requirements relating to form or contents of the application provided for in the Hague Agreement or Regulations where the International Bureau is not responsible for verifying compliance with such requirements. Such a situation could arise, for example, where the applicant submits amended drawings directly to the Office in an international design application before the Office for examination, as contemplated under Article 14(2)(c). Otherwise, the amended drawings would not be subject to *any* formal requirements. The Office's interpretation is consistent with the intent of Article 12(1). *See, e.g.,* WIPO, *Guide to the International Registration of Industrial Designs under the Hague Agreement,* B.II.36, ¶ 9.03 (Jan. 2014) (''Protection may not be refused on the grounds that the international registration does not satisfy formal requirements, since such requirements are to be considered by each Contracting Party as having already been satisfied *following the examination carried out by the International Bureau*. For example, a designated Office may not refuse protection on the ground that the required fees have not been paid or that the quality of the reproductions is not sufficient, *since such verification is the exclusive responsibility of the International Bureau*.'' (emphases added)); WIPO, *Notes on the Basic Proposal for the New Act of the Hague Agreement Concerning the International Registration of Industrial Designs,* H/DC/5, ¶ 11.01 (Dec. 15, 1998) (''*Paragraph (1)* [(referring to Article 11(1) of the Basic Proposal, which became Article 12(1))] affords the Offices of the designated Contracting Parties the right to refuse the effects of international registrations in which they are designated. It is clear, to begin with,

that protection may not be refused on the grounds that the filing does not satisfy the requirements as to form or content of the international application *laid down in the new Act or in the Regulations* to the extent that such requirements are to be considered by each Contracting Party as having already been satisfied under the international procedure.

Additionally, *once the International Bureau has ascertained that those conditions have been satisfied and has proceeded with the international registration,* paragraph (1) stipulates that no Office may refuse the effects of an international registration on the grounds that requirements relating to the form or contents of the international application that are contained *in the legislation of the Contracting Party concerned* and which are additional to or different from the requirements set out in this Act or in the Regulations have not been met.'' (third emphasis added)). *See also* the discussion of § 1.067(a), *infra* (regarding refusals permitted under the Hague Agreement with respect to optional content items).

Section 1.1062(b) concerns the timing of certain actions in international design applications. Pursuant to Hague Agreement Article 12, where the conditions for the grant of protection under the law of the Contracting Party are not met, a notification of refusal of the effects of international registration must be communicated to the International Bureau within the prescribed period. Rule 18(1) sets forth the period for communicating the notification of refusal. While Rule 18(1)(a) sets forth the prescribed period as six months from the date of publication, this period may be extended by a Contracting Party pursuant to a declaration made under Rule 18(1)(b) (extending the six-month period to twelve months). Furthermore, the declaration under Rule 18(1)(b) may also include, *inter alia,* a statement under Rule 18(1)(c)(ii) (providing for the later communication of a decision regarding the grant of protection where a decision regarding the grant of protection was unintentionally delayed by the office of the Contracting Party).

Section 1.1062(b) is added to provide that, for each international design application to be examined, the Office shall, subject to Rule 18(1)(c)(ii), send to the International Bureau within 12 months from the publication of the international registration under Rule 26(3) a notification of refusal (§ 1.1063) where it appears that the applicant is not entitled to a patent under U.S. law with respect to any industrial design that is the subject of the international registration. The Office intends to send all notifications of refusal prior to the expiration of the 12-month period set forth in § 1.1062(b). Any failure by the Office to do so would be unintentional pursuant to Rule 18(1)(c)(ii).

The Office does not regard the failure to send the notification of refusal within the period referenced in § 1.1062(b) to confer patent rights or other effect under Article 14(2). The Hague Agreement is not self-executing, and the PLTIA provides for patent rights only upon issuance of a patent. *See* 35 U.S.C. 389(d) added by the PLTIA, 126 Stat. at 1531; *see also* S. Exec. Rep. No. 110–7, at 5 (''The proposed Act makes no substantive changes in U.S. design patent law with the exception of the following: The provision of limited rights to patent applicants between the date that their international design application is published by the IB and the date on which they are granted a U.S. patent based on that application; the extension of a patent term for designs from fourteen to fifteen years from grant; and allowing the USPTO to use a published international design registration as a basis for rejecting a subsequently filed national patent application that is directed at the same or a similar subject matter.''). Furthermore, the PLTIA requires an international design application that designates the United States to be examined by the Office pursuant to title 35, United States Code. *See* 35 U.S.C. 389(a). Patent rights may only arise at the end of the examination process. The absence of a notification of refusal does not confer enforceable rights. *See* 35 U.S.C. 153 (''Patents shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon and shall be recorded in the Patent and Trademark Office.'').

Section 1.1063: Section 1.1063(a) is added to provide, in accordance with Rule 18(2)(b), that a notification of refusal shall contain or indicate: (1) The number of the international registration (Rule 18(2)(b)(ii)); (2) the grounds on which the refusal is based (Rule 18(2)(b)(iii)); (3) a copy of a reproduction of the earlier industrial design and information concerning the earlier industrial design, where the grounds of refusal refer to similarity with an industrial design that is the subject of an earlier application or registration (Rule 18(2)(b)(iv)); (4) where the refusal does not relate to all the industrial designs that are the subject of the international registration, those to which it relates or does not relate (Rule 18(2)(b)(v)); and (5) a time period for reply under §§ 1.134 and 1.136 where a reply to the notification of refusal is required (Rule 18(2)(b)(vi)).

Pursuant to Article 12, the Office communicates the notification of refusal directly to the International Bureau, which then transmits without delay a copy of the notification of refusal to the holder. The grounds of refusal may be in the form of a rejection based on a condition for patentability under title 35, United States Code (*e.g.,* 35 U.S.C. 102, 103, or 112), a requirement for restriction (where more than one independent and distinct design is presented in the application), and/or an objection (where not prohibited by Article 12(1) of the Hague Agreement). The grounds of refusal may also be based on applicant's action, including cancellation of industrial designs in the international design application by amendment or by an express abandonment of the application pursuant to § 1.138 prior to examination.

The Office will generally forward references used in the grounds of refusal (*e.g.,* a rejection under 35 U.S.C. 102 or 103) with the notification of refusal unless the reference was cited by the applicant in an information disclosure statement.

The notification of refusal communicated by the Office will set a time period for reply under §§ 1.134 and 1.136 to avoid abandonment where a reply to the notification of refusal is required. Not all notifications of refusal will require a reply. For example, where the international registration contains multiple industrial designs and all but one design is cancelled by preliminary amendment prior to examination, and the remaining design is determined by the examiner to be allowable, then a notice of allowance will be sent concurrently with a notification of refusal, refusing the effects of the international registration in the United States with respect to the industrial design or designs that have been cancelled. Such a notification of refusal, otherwise known as a ''partial notification of refusal,'' will be communicated to the International Bureau but will not set a time period for reply to the notification of refusal, as no reply to the refusal is required.

Section 1.1063(b) is added to provide that any reply to the notification of refusal must be filed directly with the Office and not through the International Bureau. Section 1.1063(b) further provides that the requirements of § 1.111 shall apply to a reply to a notification of refusal. As described above, the notification of refusal may be

a non-final Office action, including a non-final Office action on the merits, after a first examination under § 1.104.

Under the Hague Agreement, any reply to the notification of refusal must be filed directly with the Office. The applicant may not file a reply to a notification of refusal through the International Bureau. Any further correspondence from the Office will normally be sent directly to the applicant. The procedures applicable to design applications under 35 U.S.C. chapter 16 are generally applicable to international design applications after communication of the notification of refusal. *See* Article 12(3)(b) and 35 U.S.C. 389(b); *see also* WIPO, *Guide to the International Registration of Industrial Designs under the Hague Agreement,* B.II.40, ¶ 9.23 (Jan. 2014) (''Where the holder of an international registration receives, through the International Bureau, a notification of refusal, he has the same rights and remedies (such as review of, or appeal against, the refusal) as if the industrial design had been filed directly with the Office that issued the notification of refusal. The international registration is, therefore, with respect to the Contracting Party concerned, subject to the same procedures as would apply to an application for registration filed with the Office of that Contracting Party.''). Thus, for example, the provisions of 35 U.S.C. 133 and §§ 1.134 through 1.136 govern the time to reply to an Office action, including a notification of refusal that requires a reply to avoid abandonment, and the consequence for failure to timely reply (*i.e.,* abandonment).

Because the procedures following the notification of refusal are governed by national practice, the failure of an applicant to renew an international registration pursuant to Article 17(2) does not affect the pendency status of an international design application before the Office. Otherwise, applicants in international design applications would not have the same rights and remedies as applicants in national design applications, as required under Article 12(3)(b) and 35 U.S.C. 389. Similarly, the failure to renew a registration under Article 17(2) does not impact an applicant's ability to file a continuing application under 35 U.S.C. 120, 121, 365(c) or 386(c), as the critical inquiry under 35 U.S.C. 120 is the presence of copendency.

Section 1.1064: Section 1.1064(a) is added to provide that only one independent and distinct design may be claimed in a nonprovisional international design application. Subject to the requirements of Article 13, a Contracting Party whose law at the time it becomes party to the Hague Agreement requires, *inter alia,* that only one independent and distinct design may be claimed in a single application, can refuse the effects of the international registration on grounds of noncompliance with such requirement. U.S. law requires that only one independent and distinct design may be claimed in a single application. *See In re Rubinfield,* 270 F.2d 391 (CCPA 1959); *In re Platner,* 155 USPQ 222 (Comm'r Pat. 1967); MPEP 1504.05. Accordingly, § 1.1064(a) is added to provide that only one independent and distinct design may be claimed in a nonprovisional international design application.

Section 1.1064(b) provides that, if the requirements under § 1.1064(a) are not satisfied, the examiner shall in the notification of refusal or other Office action require the applicant in the reply to that action to elect one independent and distinct design for which prosecution on the merits shall be restricted. Section 1.1064(b) further provides that such requirement will normally be made before any action on the merits but may be made at any time before the final action. Review of any such requirement is provided under §§ 1.143 and 1.144.

Section 1.1065: Hague Agreement Rule 22 provides for correction of errors in the International Registration by the International Bureau, acting *ex officio* or at the request of the holder. Under Rule 22(2), a designated Contracting Party has the right to refuse the effects of correction. Accordingly, § 1.1065(a) is added to provide that the effects of any correction in the International Register by the International Bureau pursuant to Rule 22 in a pending nonprovisional international design application shall be decided by the Office in accordance with the merits of each situation, subject to such other requirements as may be imposed. Section 1.1065(a) further provides that a patent may only be corrected in accordance with the provisions of title 35, United States Code, for correcting patents. Such provisions are contained, for example, in 35 U.S.C. chapter 25. Title I of the PLTIA does not provide another mechanism for correcting patents issued on international design applications. Section 1.1065(a) also provides that any correction under Rule 22 recorded by the International Bureau with respect to an abandoned nonprovisional international design application will generally not be acted upon by the Office and shall not be given effect unless otherwise indicated by the Office. Rule 22 does not impose any requirement on a Contracting Party to give effect to a correction made under Rule 22 in an international design application that is abandoned before that Contracting Party.

Section 1.1065(b) is added to provide that a recording of a partial change in ownership in the International Register pursuant to Rule 21(7) concerning a transfer of less than all designs shall not have effect in the United States. Under the Hague Agreement, a partial change in ownership resulting from an assignment or other transfer of the international registration in respect of only some of the industrial designs or only some of the designated Contracting Parties may be recorded in the International Register pursuant to Rule 21(7). Upon recording of the partial change in ownership, the International Bureau will create a new international registration number for the part that has been assigned or otherwise transferred, and cancel that part under the originally international registration number. Consequently, it is possible that an original international registration may be divided by the International Bureau into a number of international registrations each directed to only some of the designs present in the original registration. Such would present administrative difficulties for the Office. Under Rule 21*bis,* a Contracting Party may declare that a change in ownership recorded in the International Register has no effect in that Contracting Party. Accordingly, § 1.1065(b) is added, consistent with Rule 21*bis,* to provide that a recording of a partial change in ownership in the International Register pursuant to Rule 21(7) concerning a transfer of less than all designs shall not have effect in the United States. Section 1.1065(b) does not limit the right of the owner to assign or otherwise transfer a portion of his or her interest in the application, or to record such transfer in the Office, but rather simply provides that the recording of such a transfer in the International Register will not have effect in the United States.

Section 1.1066: Section 1.1066 is added to specify the correspondence address for a nonprovisional international design application. Unlike other types of applications before the Office, an applicant does not need to file any submissions with the Office to initiate examination under § 1.1062 of an international design application designating the United States. Rather, published international design registrations that designate the United States will be systematically received from the International Bureau and examined in due course. Accordingly, § 1.1066(a) sets forth how the Office will

establish the correspondence address for a nonprovisional international design application in the absence of a communication from the applicant changing the correspondence address. Specifically, § 1.1066(a) provides that, unless the correspondence address is changed in accordance with § 1.33(a), the Office will use as the correspondence address in a nonprovisional international design application the address according to the following order: (i) The correspondence address under § 1.1042; (ii) the address of the applicant's representative identified in the publication of the international registration; and (iii) the address of the applicant identified in the publication of the international registration.

Section 1.1066(b) is added to provide that a reference in the rules to the correspondence address set forth in § 1.33(a) shall be construed to include a reference to § 1.1066 for a nonprovisional international design application.

Section 1.1067: Section 1.1067(a) is added to provide for a title in a nonprovisional international design application. The Hague Agreement does not require that an international design application contain a title. The Office believes a title that identifies the article in which a design is embodied is helpful to the public in understanding the nature of the article embodying the design after the patent has issued and also aids in identification during public search. In addition, a U.S. patent must contain a title of the invention. *See* 35 U.S.C. 154(a)(1) (''Every patent shall contain a short title of the invention. . . .''). Accordingly, pursuant to § 1.1067(a), the applicant may provide a title of the design that designates the particular article in a nonprovisional international design application. Section 1.1067(a) further provides that, where a nonprovisional international design application does not contain a title of the design, the Office may establish a title. In determining the title, the Office may look to the particular article specified in the claim.

Section 1.1067(a) also provides for a brief description of the drawings in a nonprovisional international design application, as for design applications filed under 35 U.S.C. chapter 16. Section 1.1061(a), discussed *supra,* makes applicable the rules relating to applications for patents to international design applications that designate the United States except as otherwise provided in chapter 37 of the Code of Federal Regulations or required by the Hague Agreement Articles or Regulations. Section 1.1061(b) in this final rule excludes from applicability to international design applications the requirements set forth in § 1.74 for a description of the drawings. Instead, a requirement for a brief description of the drawings is provided for in § 1.1067(a) in this final rule. The description requirement in § 1.1067(a) is consistent with the description requirement applicable to design applications filed under 35 U.S.C. chapter 16. *See* § 1.153 (''No description, other than a reference to the drawings, is ordinarily required.''). The PLTIA provides for parity in the treatment of international design applications designating the United States with design applications under 35 U.S.C. chapter 16, except where otherwise provided by the PLTIA, Hague Agreement, or Regulations. *See, e.g.,* 35 U.S.C. 389(b) (''All questions of substance and, unless otherwise required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16.''). Rule 7(5)(a) allows an applicant to include in the international design application a brief description of the reproduction even where those items are not required under Article 5(2). The purpose of Rule 7(5)(a) is to allow applicants to include these items in the international design application to avoid a refusal by a designated Contracting Party whose national law requires such items, though not as a filing date requirement. *See, e.g.,* WIPO, *Notes on the Basic Proposal for the New Act of the Hague Agreement Concerning the International Registration of Industrial Designs,* H/DC/5, ¶ 5.09 (Dec. 15, 1998) (''*Paragraph (2)* [(Article 5(3))] gives applicants the possibility of including in the international application, or accompanying it by, those additional elements which are specified in Rule 7(4) [(Rule 7(5)(a))]. Certain of those elements may be furnished by applicants in order to avoid refusal by a designated Contracting Party. If the international application does not contain an optional element as referred to in Article 5(2) and designates a Contracting Party that imposes the requirement or requirements concerned, regularization will not be carried out with the International Bureau, but with the designated Office that has issued the refusal.''). *See also* WIPO, *Records of the Diplomatic Conference for the Adoption of a New Act of the Hague Agreement concerning the International Deposit of Industrial Designs (Geneva Act) June 16 to July 6, 1999,* 480, ¶¶ 793–94 (2002) (discussing Rule 7 at the 1999 Diplomatic Conference). Contracting Parties to the Hague Agreement may require items referred to in Rule 7(5)(a) pursuant to their national law. Applicants are informed of each Contracting Party's national law requirements in the application for international registration form (DM/1 form) and corresponding instructions to the application form. *See, e.g.,* instruction form DM/1.INF, ¶ 38, currently available at *http://www.wipo.int/hague/en/forms/* (advising applicants that if they designate certain Contracting Parties, the applicant must provide the optional item required by such Contracting Party's national law, and that such item will not be reviewed by the International Bureau).

Section 1.1067(b) is added to provide that, if the applicant is notified in a notice of allowability that an oath or declaration in compliance with § 1.63, or a substitute statement in compliance with § 1.64, executed by or with respect to each named inventor has not been filed, the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee is paid to avoid abandonment. This time period is not extendable under § 1.136. As explained above, Hague Agreement Rule 8 accommodates current U.S. law regarding the inventor's oath or declaration. Because the presence of the required inventor's oath or declaration is verified by the International Bureau as part of its formalities review, the need to notify the applicant in a notice of allowability that an inventor's oath or declaration is required should be rare, *e.g.,* where an inventor is added pursuant to § 1.48(a) and an executed an oath or declaration from the inventor has not been received. *See* § 1.48(b). Since the notice of allowability is used whenever an application has been placed in a condition for allowance (*see* MPEP 1302.03), the notice of allowability does not constitute a refusal of the effects of the international registration, and thus is not a notification of refusal, notwithstanding any requirement in the notice of allowability to furnish an item, such as the inventor's oath or declaration pursuant to § 1.1067.

Section 1.1068: Section 1.1068 is added to provide that, upon issuance of a patent on an international design application designating the United States, the Office may send to the International Bureau a statement to the effect that protection is granted in the

United States to the industrial design or designs that are the subject of the international registration and covered by the patent. The sending of such a statement is provided for under Hague Agreement Rule 18*bis* and serves the purpose of providing notice to the public and third parties through publication of the statement by the International Bureau in the International Designs Bulletin that protection for an industrial design has been granted in the United States. The statement also serves as a withdrawal, in part or in whole, of any prior refusal with respect to the design covered by the patent. *See* Rule 18*bis*(2).

Section 1.1069: The Office has decided not to add § 1.1069 in this final rule. Section 1.1069 concerning a notification of division is not necessary. The requirements relating to a notification of division are clearly set forth in Rule 18(3) and Administrative Instruction 502. Furthermore, having a rule that sets forth requirements contained in an administrative instruction would necessitate the need to amend the rule each time the administrative instruction is changed.

Section 1.1070: Section 1.1070 is added to provide for the sending of a notification of invalidation to the International Bureau. Article 15 provides that the office of the Contracting Party in whose territory the effects of the international registration have been invalidated shall, where it is aware of the invalidation, notify the International Bureau of the invalidation (''notification of invalidation''). Rule 20 provides that, where the effects of an international registration are invalidated in a designated Contracting Party and the invalidation is no longer subject to any review or appeal, the office of the Contracting Party whose competent authority has pronounced the invalidation shall, where it is aware of the invalidation, notify the International Bureau accordingly. Rule 20 further specifies the required contents of the notification of invalidation. In accordance with Article 15 and Rule 20, § 1.1070(a) provides that, where a design patent that was granted from an international design application is invalidated in the United States and the invalidation is no longer subject to any review or appeal, the patentee shall inform the Office. Section 1.1070(b) provides that after receiving a notification of invalidation under § 1.1070(a) or through other means, the Office will notify the International Bureau in accordance with Rule 20.

Section 1.1071: Section 1.1071 is added to provide that a grant of protection for an industrial design that is the subject of an international registration shall only arise in the United States through the issuance of a patent pursuant to 35 U.S.C. 389(d) or 171 and in accordance with 35 U.S.C. 153.

Section 3.1: Section 3.1 is amended to include an international design application that designates the United States of America within the definition of ''application'' for purposes of Part 3 of Title 37 of the CFR. The change to the definition of ''application'' in § 3.1 makes clear that assignments (or other documents affecting title) of international design applications that designate the United States may be submitted to the Office for recording. The change to § 3.1 is in accordance with 35 U.S.C. 385, added under the PLTIA, which provides that an international design application designating the United States has the effect, for all purposes, of an application for patent filed in the Office pursuant to 35 U.S.C. chapter 16. 126 Stat. at 1529.

Section 3.21: Section 3.21 is amended to provide that an assignment relating to an international design application that designates the United States must identify the international design application by the international registration number or by the U.S. application number assigned to the international design application.

Section 5.1: Section 5.1(b) is amended to change the definition of ''application'' as used in part 5 of title 37 of the CFR to include international design applications and for consistency with the definitions in § 1.9. Section 5.1(b) is also amended to include a definition of ''foreign application'' to permit simplification of other rules contained in part 5.

Section 5.3: Section 5.3(d) is amended to clarify that an international design application that is subject to a secrecy order will not be mailed, delivered, or otherwise transmitted to the international authorities or the applicant.

Section 5.11: The title of § 5.11 is amended to encompass international design applications and to indicate that the license authorizes filing and exporting. Section 5.11(a) is amended to clarify that, just as for filing an international application in the United States Patent and Trademark Office acting as a Receiving Office under the PCT, a foreign filing license is not required to file an international design application in the United States Patent and Trademark Office acting as an office of indirect filing under the Hague Agreement. The Office notes that, pursuant to § 5.12, filing of an international design application constitutes ''a petition for license under 35 U.S.C. 184 for the subject matter of the application.'' Sections 5.11(b), (c), (e)(3)(i), and (f) are amended to change ''foreign patent application'' to ''foreign application,'' as the provisions of 35 U.S.C. 184 are not limited to ''patent'' applications but include other types of applications, *e.g.,* registrations of industrial designs. Section 5.11(b) is also amended for consistency with § 5.11(c) with respect to the citation to regulations contained in other titles under the Code of Federal Regulations. Section 5.11(f) is also amended to refer to the Office as the United States Patent and Trademark Office.

Section 5.12: Section 5.12 is amended for consistency with the definition of ''application'' in § 5.1(b) as amended in this final rule and to indicate that the grant of a foreign filing license may be on an official notice other than the filing receipt, *e.g.,* in the case of international applications filed under the PCT, on the ''Notification of the International Application Number and of the International Filing Date'' (Form PCT/RO/105).

Section 5.13: Section 5.13 is amended to include as a corresponding application for purposes of this section an international design application that has been filed in the United States. Thus, if no corresponding national, international design, or international application has been filed in the United States, the petition for license under § 5.12(b) must also be accompanied by a legible copy of the material upon which a license is desired.

Section 5.14: Section 5.14(c) is amended for clarity to provide that a copy of the application to be filed or exported abroad must be furnished with the petition under § 5.14 under the conditions set forth in § 5.14(c). The copy of the application required under § 5.14(c) may be a copy of the international design application to be filed or exported abroad.

Section 5.15: Section 5.15(a) introductory text and paragraphs (a)(3), (b), (d) and (e) are amended for consistency with the changes to §§ 5.1(b) and 5.11 as amended in this final rule.

Section 11.10: Section 11.10(b)(3)(iii) is amended to include international design application in the definition of patent application for purposes of § 11.10.

Section 41.200(b): Section 41.200(b) is added to provide that any reference to 35 U.S.C. 102 or 135 in this subpart refers to the statute in effect on March 15, 2013, unless otherwise expressly indicated, and to provide that any reference to 35 U.S.C. 141 or 146 in this

subpart refers to the statute applicable to the involved application or patent. Section 41.200(b) is added for clarity consistent with the changes made under the first inventor to file provisions of the AIA.

Section 41.201: The definition of ''constructive reduction to practice'' is amended to provide that for a chain of patent applications to be continuous, each subsequent application must comply with the requirements of 35 U.S.C. 119–121, 365, or 386. The amended definition accounts for priority under 35 U.S.C. 386 added by title 1 of the PTLIA as well as priority under 35 U.S.C. 119, 365(b), and 365(c). The definition of ''threshold issue'' is amended by changing the reference to 35 U.S.C. 112(a) in paragraph (2)(ii) to 35 U.S.C. 112, as the written description requirement under pre-AIA 35 U.S.C. 112, first paragraph, may be applicable in certain cases.

Comments and Responses to Comments: The Office published a notice of proposed rulemaking on November 29, 2013, proposing to change the rules of practice to implement title I of the PLTIA. *See Changes To Implement the Hague Agreement Concerning International Registration of Industrial Designs,* 78 FR 71870 (Nov. 29, 2013). The Office received seven written submissions containing comments from intellectual property organizations, academia, a law firm, an individual patent practitioner, and the general public in response to this notice of proposed rulemaking. The summarized comments and the Office's responses to those comments follow:

Closed System

Comment 1: Several comments requested that the Office clarify whether an international design application that designates the United States can be assigned to a person who is not entitled to file an international design application under the Hague Agreement. One of the comments further suggested that such clarification be made by amending certain rules affected by a limitation on assignment, in particular § 1.46(c) (pertaining to a change in the applicant), §§ 3.21 and 3.24 (pertaining to assignments), and all rules pertaining to actions by the patent owner (*e.g.,* §§ 1.172 and 1.510). Another comment suggested that if assignment is restricted, any patent granted on an international design application should include a notice to the public of the restriction. A further comment questioned whether any restriction in transfer of ownership, if applicable to international design applications, would also apply to continuing applications.

Response: The PLTIA does not restrict assignment of international design applications designating the United States, or patents issuing thereon, to persons entitled to file an application under the Hague Agreement. 35 U.S.C. 261 provides that ''patents shall have the attributes of personal property,'' that ''[a]pplications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing'' and that ''[t]he applicant, patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.'' *See also GAIA Techs., Inc.* v. *Reconversion Techs., Inc.,* 93 F.3d 774, 777–80 (Fed. Cir. 1996), *as amended on reh'g,* 104 F.3d 1296 (Fed. Cir. 1996) (''Patents . . ., like other personal property, may be conveyed from the inventor . . . to others. . . .''). Title I of the PLTIA did not change 35 U.S.C. 261 or otherwise restrict to whom an international design application or patent issuing thereon may be assigned.

The fact that the Hague Agreement is a closed system, in that only persons who meet certain criteria may *file* an international design application, does not restrict the ability to transfer *ownership* in the application (or resulting patent) to a person not entitled to file under the system. Similar to Hague applicants, applicants in international applications filed under the PCT must be nationals or residents of PCT Contracting States in order to file international applications. *See* PCT Article 9. Also, U.S. national law does not restrict the ability of PCT applicants to assign PCT applications designating the United States to persons not entitled to file applications under the PCT. *See, e.g.,* § 3.1 (defining ''application'' for purposes of the rules governing assignments to broadly include ''international [PCT] applications that designate the United States''); § 3.21 (specifying only an identification requirement for assignments relating to international patent applications that designate the United States). In contrast, applicants filing for trademark protection under the Madrid Protocol are barred from assigning an extension of protection to a person who is not entitled to file the application under the Madrid Protocol (*see, e.g.,* § 7.22 (providing that Section 10 of the Lanham Act and 37 CFR part 3 are not applicable to assignments or restrictions of international registrations)). This is because the Madrid Protocol Implementation Act of 2002, unlike the PLTIA and legislation implementing the PCT, expressly restricts assignment. *See* 15 U.S.C. 1141l (''An extension of protection may be assigned, together with the goodwill associated with the mark, only to a person who is a national of, is domiciled in, or has a bona fide and effective industrial or commercial establishment either in a country that is a Contracting Party or in a country that is a member of an intergovernmental organization that is a Contracting Party.'').

Furthermore, Article 16 of the Hague Agreement provides only that the International Bureau shall record changes in ownership of the international registration in the International Register, provided that the new owner is entitled to file an international application under Article 3. *See* Article 16(1)(i). Recording changes in ownership by the International Bureau in the International Register is a separate issue from whether an international design application can be assigned or otherwise transferred under national law. The Hague Agreement does not govern the validity of ownership changes. *See* WIPO, *Guide to the International Registration of Industrial Designs under the Hague Agreement,* B.II.46, ¶ 13.04 (Jan. 2014) (''Furthermore, the issue of the recording of a change in ownership in the International Register must be distinguished from that of the validity of such change in ownership. The Hague Agreement does not set out, for example, the conditions to be met regarding the validity of a deed of assignment relating to an international registration. These conditions are, and remain, governed exclusively by the relevant domestic legislation, and may therefore vary from one Contracting Party to another (*e.g.,* the need for execution of a document in writing certifying the assignment, proof of the age of the parties in order to assess their legal entitlement, etc.).''). *See also id.* at ¶ 13.05 (''The Hague Agreement provides only for the requirements to be complied with in order to validly record a change in ownership in the International Register.'').

One comment suggested amending § 1.46(c) to clarify whether an international design application designating the United States can be amended to name an applicant who is not entitled to file under the Hague Agreement. The Office does not deem clarification necessary. Who qualifies to be an applicant for a designated Contracting Party is a matter of national law. The PLTIA does not expressly state who is qualified to be an applicant for an international design application designating the United States, but

otherwise indicates that a qualified applicant does not differ from a person qualified to be an applicant for a national design application under 35 U.S.C. 171–73. *See* section 101(a) of the PLTIA (adding 35 U.S.C. 389(b) (''All questions of substance and, unless otherwise required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16.''); 35 U.S.C. 382(c) (''Except as otherwise provided in this chapter, the provisions of chapter 16 shall apply.''); and 35 U.S.C. 383 (''In addition to any requirements pursuant to chapter 16, the international design application shall contain . . . .'')). 126 Stat. at 1528–30. Pursuant to 35 U.S.C. 118, as amended under the AIA, an assignee may be an applicant in a patent application. As explained above, the assignee of an international design application designating the United States may be a person not entitled to file an application under the Hague Agreement. In accordance with 35 U.S.C. 118, such person may be named as an applicant in the international design application pursuant to the provisions of § 1.46(c). This is also consistent with applicant changes made pursuant to § 1.46(c) in the U.S. national phase of PCT international applications. Because the Office does not consider the PLTIA to prohibit assigning an international design application designating the United States to a person not entitled to file an application under the Hague system, the rules do not provide for any restriction on assignment.

Comment 2: One comment suggested that a U.S. patent issuing from an international design application be identified as an ''international design patent'' to clarify that rights are subject to the Hague Agreement, with its closed system features, for example, only membership participation, assignment of International Registration rights, and renewal features.

Response: A U.S. patent issued on an international design application will include information on the front page that will indicate that the patent issued on an international design application. But identifying a U.S. patent issued on an international design application as an ''international design patent'' may lead to confusion among the public and others as to the scope of protection arising under the patent. A patent issued on an international design application designating the United States has the force and effect of a patent issued on an application filed under 35 U.S.C. chapter 16. *See* 35 U.S.C. 389(d).

Continuing Applications, Continued Prosecution Applications, and Converted Applications

Comment 3: One comment requested that the Office provide for continued prosecution applications (CPAs) in international design applications. The comment asserts that CPAs provide for quick resolution of remaining issues in prosecution, have lower filing fees than continuation applications, provide provisional rights, and are required under the PLTIA. Alternatively, the comment requests that the Office either expedite or prioritize examination of a continuation application claiming priority to an international design application in limited circumstances, or provide a conditional petition procedure whereby a petition could be filed after allowance that would permit consideration of an information disclosure statement or other matter after allowance and the petition would constitute the filing of a continuation application if the examiner determines that new issues are raised.

Response: The final rules do not provide for the filing of a CPA in an international design application. The Office created CPAs for all applications following the change in patent term for utility applications from 17 years from issuance to 20 years from filing. The primary reason for creating CPAs was to minimize any reduction in patent term for continuing utility applications caused by new application processing by eliminating the need to assign the continuing application a new application number and filing date. *See 1996 Changes to Patent Practice and Procedure,* 61 FR 49820, 49825 (Sept. 23, 1996). A CPA is a streamlined continuation or divisional application under 35 U.S.C. 120 whose filing date is the date on which the request for a CPA is filed. *See* § 1.53(d)(2) (providing that the filing date of a continued prosecution application is the date on which a request on a separate paper for an application under this paragraph is filed). A request for a CPA constitutes a request to expressly abandon the earlier application and to use the file jacket and contents of the prior application. *See* § 1.53(d)(2)(iv), (v).

Subsequently, in the American Inventors Protection Act, Congress added request for continued examination (RCE) practice for utility and plant applications, while simultaneously providing for publication of applications 18 months from filing and provisional rights from the date of publication. *See Request for Continued Examination Practice and Changes to Provisional Application Practice,* 65 FR 50092–101 (Aug. 16, 2000); 35 U.S.C. 132(b). Since an RCE is not a new application that is separately published, the provisional rights period continues from the original publication date. *See* 35 U.S.C. 154(d)(1). RCE practice was not extended to U.S. design applications, which are not published. *See* 35 U.S.C. 132 ed. note. The Office eventually eliminated CPA practice for all applications except U.S. design applications. *See Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications,* 68 FR 32376–81 (May 30, 2003).

A patent issuing on a CPA would not be entitled to provisional rights based on the prior publication of the international design application under the treaty, as asserted in the comment. Pursuant to 35 U.S.C. 154(d)(1), provisional rights begin on ''the date of publication of the application for such patent'' under 35 U.S.C. 122(b). As previously explained, a CPA is a continuation or divisional application of the prior application. *See* § 1.53(d)(1) (providing that a continuation or divisional application (but not a continuation-in-part) of a prior nonprovisional application may be filed as a continued prosecution application under the paragraph); § 1.78(d)(4) (providing that the request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior-filed application). The filing of a CPA operates as an express abandonment of the prior application as of the filing date of the CPA request. *See* § 1.53(d)(2)(v) (providing that a CPA is a request to expressly abandon the prior application as of the filing date of the request for a CPA). Accordingly, a patent issuing on a CPA obtains provisional rights only from the date of its publication, not from the date of publication of the earlier application. U.S. design applications are not published and do not qualify for provisional rights. *See* 35 U.S.C. 122(b)(2)(A)(iv); 35 U.S.C. 154(d)(1). Thus, even if the filing of a CPA from an international design application were permitted, a design patent issuing from the CPA would not be entitled to provisional rights because the CPA is not published. While an RCE is not a new application, and thus permits extension of the provisional rights period from the date of the earlier publication, RCE practice is not available for U.S. design applications.

A CPA of an earlier U.S. design application is possible because the prior application has already been reviewed

by the Office for compliance with the same statutory and regulatory requirements applicable to the CPA, thus eliminating the need for a separate review of the CPA. *See* § 1.53(d)(1)(ii) (providing that the prior nonprovisional application is a design application that is complete as defined by § 1.51(b)). No such efficiencies exist so as to permit the filing of a CPA from an international design application. The Office will not be performing a formalities review of international design applications designating the United States prior to examination. Instead, the International Bureau will review international design applications for compliance with the applicable *treaty* requirements. A CPA is a U.S. design application under 35 U.S.C. chapter 16, not an international design application under the Hague Agreement. Consequently, a CPA is subject to different statutory and regulatory requirements than international design applications. *Compare* 35 U.S.C. 171–173 *with* 35 U.S.C. 381–390; *compare* 37 CFR 1.151–1.155 *with* final rules §§ 1.1001–1.1071. For example, an international design application and CPA are subject to different filing date requirements (*compare* 35 U.S.C. 171(c) *with* 35 U.S.C. 384) and different content requirements (*e.g.,* regular U.S. design applications are required under § 1.153 to include a title; no such formal requirement applies to international design applications). In addition, as discussed above, an international design application is published and entitles the holder to provisional rights, whereas a CPA does not. *Compare* 35 U.S.C. 390 *with* 35 U.S.C. 122(b)(2)(A)(iv); *see also* 35 U.S.C. 154(d). Given these differing requirements, the same opportunity for streamlined continuation practice does not exist.

Furthermore, international design applications filed with the Office will be assigned a U.S. application number having a series code unique to international design applications to distinguish such applications from other applications filed with the Office. Allowing a design application filed under 35 U.S.C. chapter 16 to use an application number associated with international design applications may lead to confusion and errors in processing the application under the different requirements applicable to international design applications and applications filed under 35 U.S.C. chapter 16. In addition, use of the same application number for both the CPA and the international design application would significantly complicate the changes needed to the Office's IT systems to support the small number of applications that would be affected. For example, the notice of allowance, processing of issue fee payments, and formal objections that may be applicable under examination differ between international design applications and design applications filed under 35 U.S.C. chapter 16.

The fees associated with the filing of a CPA are not lower than the fees associated with the filing of a continuing design application, as stated in the comment. Rather, the fees are the same. *See* § 1.53(d)(3) (providing that the filing fee, search fee, and examination fee for a continued prosecution application filed under this paragraph are the basic filing fee as set forth in § 1.16(b), the search fee as set forth in § 1.16(l), and the examination fee as set forth in § 1.16(p)).

The comment asserts that not permitting CPAs appears to be contrary to the explicit language and intent of 35 U.S.C. chapter 38 and the other portions of the proposed rules. The comment points to, *inter alia,* 35 U.S.C. 382(c), 35 U.S.C. 384(a), and the proposed rules with respect to examination and general filing requirements, which are modeled after the current treatment of 35 U.S.C. chapter 16 applications before the Office. The PLTIA, including the provisions cited to in the comment, generally provides for applicability of the requirements of 35 U.S.C. chapter 16 to international design applications designating the United States except where otherwise provided under title 35, United States Code, or required by the Hague Agreement or Hague Agreement Regulations. CPA practice, however, is not a requirement of 35 U.S.C. chapter 16. Rather, as previously explained, CPAs were created by regulation as a streamlined continuation practice under 35 U.S.C. 120. A CPA is a U.S. application and is just like any other design application filed under 35 U.S.C. chapter 16. Not permitting CPAs claiming priority to international design applications is not inconsistent with any provision of 35 U.S.C. chapter 38.

The Office has not adopted, as recommended by the commentor, rules to prioritize or expedite examination of a continuation application of an international design application in limited circumstances. Prioritizing or expediting examination of continuation applications would present an administrative burden for the Office in identifying those continuation applications that qualify for expedited treatment. Furthermore, Office records show that CPAs are currently filed in less than 3% of design applications. Also, the number of international design applications is anticipated to be, at least initially, a small fraction of total design applications filed with the Office. In 2013, 2,990 international design applications were filed via the Hague system, whereas 35,077 design applications were filed with the Office under 35 U.S.C. chapter 16. The Office is reluctant to develop new and complicated procedures at this time to accommodate a handful of applications, especially since the procedures could negatively impact administrative efficiency in processing all continuing applications filed with the Office. Applicants desiring expedited examination in continuation applications may utilize the ''rocket docket'' procedure pursuant to § 1.155.

The Office also has not adopted rules to provide for a conditional petition procedure to allow for consideration of an information disclosure statement (or other issue) after allowance wherein the petition would constitute the filing of a continuation application if the examiner determines a new issue is raised. Section 1.97 currently provides for consideration of an information disclosure statement filed after allowance but on or before payment of the issue fee, when accompanied by the fee set forth in § 1.17(p) and statement required under § 1.97(e). *See* § 1.97(d). Office records indicate that in 2012, only 14 CPAs were filed with an information disclosure statement on or after the date of payment of the issue fee. Further, this number corresponds to the larger pool of regular design applications and would be expected to be even less for the smaller pool of international design applications. As with the suggestion to expedite continuations, the Office is hesitant to develop new and complicated procedures at this time to account for a nominal number of potentially affected international design applications, as this may negatively impact administrative efficiency in processing all design applications. The Office intends to reconsider the need for further procedures after the Office gains more experience in processing international design applications and as the number of filings increases.

Comment 4: One comment questioned whether the filing of a divisional application of an international design application (or electing not to file a divisional application) will have a ''file wrapper estoppel'' impact on interpretation of the claim of a patent on the international design application, given the recent Federal Circuit decision in the *Pacific Coast Marine Windshields Ltd.* v. *Malibu Boats, LLC,* No. 13–1199 (Fed. Cir. Jan. 8, 2014), holding that

principles of file wrapper estoppel are applicable to design patents.

Response: The doctrine of file wrapper estoppel is applied by courts to limit the application of the doctrine of equivalents in determining patent infringement. The doctrine of file wrapper estoppel prohibits a patent owner from recapturing subject matter deliberately surrendered during the course of proceedings in the Office to obtain the patent. Since it is the courts, not the Office, that determine the reach of file wrapper estoppel, the Office cannot predict whether courts will apply file wrapper estoppel where an applicant files a divisional application of an international design application or elects not to file a divisional application. The Office notes, however, that the PLTIA generally provides for parity in treatment between design applications filed under 35 U.S.C. chapter 16 and international design applications designating the United States. *See, e.g.,* 35 U.S.C. 389(d) (''The Director may issue a patent based on an international design application designating the United States, in accordance with the provisions of this title. Such patent shall have the force and effect of a patent issued on an application filed under chapter 16.'').

Local Representation

Comment 5: Several comments expressed concern that unscrupulous persons not registered to practice before the Office (''non-practitioners'') may utilize the Hague system to procure U.S. design patents and not be subject to the U.S. disciplinary rules set forth in 37 CFR part 11 concerning representation of others before the Office. One comment encouraged the Office to work with the International Bureau to implement procedures for disciplining and sanctioning representatives filing international design applications through the International Bureau. The comment also suggested that even if unscrupulous non-practitioners are subject to the disciplinary rules set forth in 37 CFR part 11 or other judicial discipline or sanction, the effectiveness of appropriate discipline or sanction could be reduced where such non-practitioners are based outside the United States. Accordingly, the comment recommends the promotion of high standards of conduct for practitioners and non-practitioners in all jurisdictions. One comment requested the Office to be mindful of new scams that may arise to exploit the Hague Agreement and to work with the International Bureau and Federal Trade Commission to address strategies for stopping such scams if and when they arise.

Response: The Office appreciates the concerns raised in the comment. The Office notes that a party presenting a paper to the Office, whether a practitioner or non-practitioner, certifies, among other things, that statements made are true and formed after an inquiry reasonable under the circumstances. *See* § 11.18(b). The Office maintains jurisdiction over persons not registered or recognized to practice before the Office who provide or offer to provide any legal services before the Office. *See* § 11.19(a). Such jurisdiction extends to practice that may include presentation to the Office or any of its officers or employees relating to a client's rights, privileges, duties, or responsibilities under the laws or regulations administered by the Office for the grant of a patent and includes preparing necessary documents in contemplation of filing the documents with the Office, corresponding and communicating with the Office, and representing a client through documents or at interviews, hearings, and meetings, as well as communicating with and advising a client concerning matters pending or contemplated to be presented before the Office. *See* § 11.5(b).

The Office recognizes that the provisions of 37 CFR part 11 may not serve to deter all improper activity or conduct in connection with applications filed under the Hague Agreement. The Office will endeavor to explore with the International Bureau steps that may be taken to address the concerns raised in the comment and to promote high standards of conduct for practitioners and non-practitioners in all jurisdictions.

The Office also notes that it maintains a Scam Prevention page on its Web site (*http://www.uspto.gov/inventors/scam_prevention/index.jsp*), which contains relevant information regarding scam prevention and includes links to the Federal Trade Commission Web site where individuals may find information regarding consumer protection resources. Furthermore, under the American Inventors Protection Act of 1999, the Office does provide, through this Web site, a public forum for the publication of complaints concerning invention promoters/promotion firms. In addition, the Web site identifies known scams concerning non-Office solicitations. Warnings of scam solicitations have also been published by the International Bureau in connection with international applications filed under the Patent Cooperation Treaty. *See, e.g.,* WIPO, *Warning: Requests for Payment of Fees, http://www.wipo.int/pct/en/warning/pct_warning.html.*

Comment 6: One comment questioned whether the duty of disclosure under § 1.56 is applicable to non-practitioners and the applicants they represent who obtain U.S. design patents on international design applications through dealings exclusively with the International Bureau.

Response: Section 1.56(a) provides that each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability. Section 1.56(c) further provides that individuals associated with the filing or prosecution of a patent application for purposes of § 1.56 are: each inventor named in the application; each attorney or agent who prepares or prosecutes the application; and every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, the applicant, an assignee, or anyone to whom there is an obligation to assign the application.

An international design application designating the United States has the effect of a U.S. patent application and thus is subject to § 1.56. *See* 35 U.S.C. 385 (''An international design application designating the United States shall have the effect, for all purposes, from its filing date determined in accordance with section 384, of an application for patent filed in the Patent and Trademark Office pursuant to chapter 16.''). *See also* 35 U.S.C. 389(b) (''All questions of substance and, unless otherwise required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16.''). Thus, pursuant to § 1.56(c), non-practitioners who are substantively involved in the preparation or prosecution of an international design application designating the United States and who are associated with the inventor, the applicant, an assignee, or anyone to whom there is an obligation to assign the application, have a duty of disclosure under § 1.56. The duty under § 1.56 does not apply to applicants *per se,* as an applicant may be a legal entity and thus not an ''individual'' as required under § 1.56(a), but the duty does apply to inventors (who may be applicants) and to every person who is

substantively involved in the preparation or prosecution of the application and who is associated with the inventor, the applicant, an assignee, or anyone to whom there is an obligation to assign the application. *See also* MPEP 2001.01 (''The word 'with' appears before 'the assignee' and 'anyone to whom there is an obligation to assign' to make clear that the duty applies only to individuals, not to organizations. For instance, the duty of disclosure would not apply to a corporation or institution as such. However, it would apply to individuals within the corporation or institution who were substantively involved in the preparation or prosecution of the application, and actions by such individuals may affect the rights of the corporation or institution.'').

Examination

Comment 7: One comment suggested that a rule should be added to confirm the Office's ability to continue to prosecute an international design application after the Office sends a notification of refusal, for example, where new prior art is discovered after the notification of refusal is sent.

Response: The Office agrees that prosecution may continue in an international design application after the Office sends a notification of refusal and that the Office may, where appropriate, apply newly discovered prior art to reject the claimed invention in a subsequent Office action. International design applications that designate the United States are required to be examined pursuant to title 35, United States Code. *See* 35 U.S.C. 389(a); § 1.1062(a). Reexamination of the application, if applicant persists in his or her claim for a patent after receiving notice of a rejection, is provided by statute. *See* 35 U.S.C. 132. Further, a patent shall issue only if on examination it appears that the applicant is entitled to a patent under the law. *See* 35 U.S.C. 131. Examination procedures and rules applicable to domestic applications apply to international design applications that designate the United States, except as otherwise provided in the rules or required by the Hague Agreement Articles or Regulations. *See* 35 U.S.C. 389(b); § 1.1061. Thus, for example, any reply under § 1.111 to a notification of refusal rejecting the claimed design will be considered and the application again examined, and the applicant notified in an Office action which, if appropriate, may be made final. *See* §§ 1.112, 1.113. Accordingly, no rule changes are necessary.

Comment 8: One comment questioned whether consideration has been given as to whether an improper broadening of the disclosure would result where formal drawings are provided to the Office in compliance with U.S. practice that do not include a portion of the design as shown in a photograph (or other depiction) that was originally filed in the international design application, or show a portion of the photograph content in dotted lines. The comment also asked whether guidelines will be forthcoming.

Response: International design applications designating the United States are subject to the same substantive conditions for patentability as regular U.S. applications, including the written description requirement under 35 U.S.C. 112(a). The Office will consider whether an amendment to the specification, drawings, or claim is improper under 35 U.S.C. 112(a) or 132 for reasons of new matter in accordance with the MPEP 1504.04 (''An amendment to the claim which has no antecedent basis in the specification and/or drawings as originally filed introduces new matter because that subject matter is not described in the application as originally filed. The claim must be rejected under 35 U.S.C. 112(a) (or for applications [filed] prior to September 16, 2012, 35 U.S.C. 112, first paragraph). An amendment to the disclosure not affecting the claim (such as environment in the title or in broken lines in the drawings), which has no antecedent basis in the application as originally filed, must be objected to under 35 U.S.C. 132 as lacking support in the application as originally filed and a requirement must be made to cancel the new matter.''). The Office will consider whether a particular design application, including any amended drawings, meets the written description requirements on a case-by-case basis.

The Office recently hosted a roundtable discussion regarding application of the written description requirement to amended or continuation design claims. *See Request for Comments and Notice of Roundtable Event on the Written Description Requirement for Design Applications,* 79 FR 7171 (Feb. 6, 2014). The notice and roundtable sought public input regarding specific instances where an amendment in a design application may raise a question as to whether the applicant had possession of the newly claimed design at the time of filing the original application. The Office will consider the written comments received in response to that notice and roundtable and will evaluate when drafting any further guidance.

Comment 9: One comment questioned what operative dates will be used for response times for communications transmitted to the International Bureau for forwarding to the applicant.

Response: Communications transmitted by the Office to the International Bureau for forwarding to the applicant will indicate a time period for reply, where a reply to the communication is required by the Office. *See, e.g.,* § 1.1063(a)(4).

Comment 10: One comment requested that the Office clarify that the rules applicable to design applications filed under chapter 16 apply to design applications that are converted from international design applications pursuant to § 1.1052.

Response: This final rule revises § 1.1052 to include a new paragraph (d) to clarify that an international design application converted under § 1.1052 is subject to the regulations applicable to a design application filed under 35 U.S.C. chapter 16.

Comment 11: Several comments requested that the Office clarify that continuing applications, including divisional applications, that claim benefit to an international design application under § 1.78 are subject to the rules governing domestic national applications.

Response: A continuing application that claims benefit under § 1.78 to an international design application may be filed as a national application or as an international design application. *See* 35 U.S.C. 386(c). A continuing design application, including a divisional design application, filed under 35 U.S.C. chapter 16 is subject to the rules governing domestic national design applications, *e.g.,* §§ 1.151–1.155. In contrast, a continuing application filed as an international design application is subject to the requirements of the Hague Agreement and the rules applicable to international design applications.

Comment 12: One comment requested that the Office notify the applicant of the need to file a certified copy of a foreign priority document required under § 1.55 and the time limit to furnish the certified copy. The comment indicated that many applicants may not have retained U.S. counsel and may be unaware of the requirement to provide the certified copy prior to payment of the issue fee.

Response: Where an application includes a priority claim under § 1.55 but the required certified copy of the priority document has not been filed, examination procedures provide for applicant notification that the certified copy has not been filed as required by § 1.55. *See* MPEP 214.03, 1302.06. In

addition, the requirement in former § 1.55(g) for payment of the processing fee set forth in § 1.17(i) where the certified copy is filed after the date the issue fee is paid has been eliminated from § 1.55 in this final rule. Furthermore, § 1.55(g) in this final rule sets forth a petition procedure to permit the filing of the certified copy in a patented design application upon a showing of good and sufficient cause for the delay and petition fee set forth in § 1.17(g). The petition procedure in § 1.55(g) corresponds to the petition procedure under § 1.55(f) applicable to utility applications.

Comment 13: One comment requested that a continuing application from an international design application not be subject to the petition requirement under § 1.84(a)(2) to accept color drawings and/or photographs, as the drawings and/or photographs would have already been accepted in the international design application. The comment further requests that the Office consider eliminating the petition requirement under § 1.84(a)(2) altogether.

Response: This comment has been adopted as to design applications. Section 1.84(a)(2) has been amended to remove the requirement for a petition in order for the Office to accept color drawings or photographs in design applications. Applicants will still be required to include the reference to the color drawings or photographs in the specification as set forth in § 1.84(a)(2)(iii) to provide notice in the patent of the submission of color drawings or photographs. Because there is rarely a need to file color drawings or photographs in utility applications, and there are operational concerns with permitting color drawings or photographs in utility applications, the Office has not eliminated the petition requirement for color drawings or photographs in utility applications at this time but may reconsider the matter at a later date.

International Fees

Comment 14: Several comments requested that the Office quickly transfer international fees paid through the Office to the International Bureau to minimize the risk of currency fluctuations. One comment further requested that the Office receive same-day confirmation of fees received by WIPO in Swiss currency, indicating a concern that fee deficiency may result in a delayed registration date and, consequently, a delayed filing date in the United States under § 1.1023.

Response: The Office intends to transfer international fees to the International Bureau as quickly as possible. The Office plans to transmit international design application fees once the Office receives the international design application, the applicant has paid the Office the transmittal fee, and the Office has transmitted the international design application to the International Bureau. The Office does not transmit fees directly to the International Bureau in Swiss currency. Rather, such fees are forwarded to the Department of Treasury for transmission to the International Bureau. Accordingly, the Office cannot receive same-day confirmation of fees received by the International Bureau in Swiss currency. Applicants may establish a debit account directly with the International Bureau (*see Response to Comment 15*) and receive confirmation upon electronic payment of fees. Alternatively, applicants may simply wait for the invitation from the International Bureau and pay the international fees directly to the International Bureau. The international registration date is not dependent upon the date of payment of the prescribed fees. *See* Article 10(2); Rule 14(2). Accordingly, the later payment of a fee deficiency will not result in a later international registration date and, consequently, will not affect the filing date in the United States under § 1.1023.

Comment 15: One comment requested that applicants be advised as to any options pertaining to a deposit account with WIPO to account for fee discrepancies.

Response: Section 1.1031(d)(1) provides for payment of international fees directly to the International Bureau and references Administrative Instruction 801, which sets forth the various methods of payment accepted by the International Bureau, including payment by deposit account established with the International Bureau. In addition, the international design application DM/1 form includes a fee payment section that informs applicants of the option to use a deposit account established with the International Bureau.

Comment 16: One comment requested that the Office prompt applicants filing international design applications through the Office with a link to pay fees directly to WIPO to avoid fee discrepancies.

Response: The system used by the International Bureau to process international design applications and applicable fees does not currently have the capability to electronically accept fees except where applicants file the application directly with the International Bureau through its e-filing interface. The Office will endeavor to work with the International Bureau to provide for such functionality in the future.

Comment 17: One comment requested that the Office amend § 1.1031 to include a provision that international registration renewal fees are not required to maintain a U.S. design patent in force. In addition, to avoid public confusion and detrimental reliance by giving the impression that a U.S. design patent may have lapsed or expired if the registration is not renewed, the comment requests that the Office encourage the International Bureau to adjust its current Certificate of Renewal and renewal system to reflect U.S. practice.

Response: This comment is adopted. The final rule revises § 1.1031 to include a new paragraph (e) to provide that payment of the fees referred to in Article 17 and Rule 24 for renewing an international registration (''renewal fees'') is not required to maintain a U.S. patent issuing on an international design application in force. The Office appreciates the concerns with respect to the current Certificate of Renewal process as it relates to U.S. practice and will endeavor to work with the International Bureau on this matter.

Comment 18: One comment suggests that the Office provide a new rule expressly stating that the International Bureau handles international registration renewal fees and that the Office will not process those fees.

Response: This comment is adopted. The final rule revises § 1.1031 to include a new paragraph (e) to provide that renewal fees, if required, must be submitted directly to the International Bureau and that any renewal fee submitted to the Office will not be transmitted to the International Bureau. Any renewal fee paid to the Office will be refunded.

Miscellaneous

Comment 19: One comment requested the Office to modify proposed rule § 1.1027 by moving the second sentence concerning the prohibition on deferment of publication to a new rule so that the prohibition is made more prominent. The comment also requested that the Office promptly inform applicants of improper requests for deferment of publication.

Response: This final rule revises § 1.1027 as suggested and adds a new rule § 1.1028 (''Deferment of publication'') to make more prominent that a request for deferment of publication is not permitted in an international design application that

designates the United States or other country that does not permit deferment of publication. With regard to review of requests for deferment and notification to applicants of improper requests under the Hague Agreement, the International Bureau performs this function. *See* Article 11(3).

Comment 20: One comment requested that the Office consider the option under the Hague Agreement of receiving all deferred international registrations at the time of international registration. The comment suggested that a copy of the international registration may be useful in making a determination as to whether the design is ''patented'' for purposes of 35 U.S.C. 102(a). The comment also raises as a further consideration the prior art effect of a deferred international registration under 35 U.S.C. 102 (pre-AIA and AIA) and suggests that the international registration may be prior art at the time of publication, and consequently, no advance notice of the deferred international registration would be needed for examination as U.S. design examiners have access to the WIPO Bulletin online for search purposes.

Response: Where publication of the international registration has been deferred, the Office cannot receive a copy of the international registration at the time of international registration from the International Bureau. While Article 10(5) allows a designated office to obtain a copy of the international registration immediately after registration, the United States cannot be designated where publication has been deferred. *See* § 1.1028.

Where the United States is designated (and thus there is no deferment of publication), the Office will receive the published international registration approximately six months from the date of international registration, or immediately after international registration where immediate publication was requested. *See* Rule 17(1). At the present time, the Office does not plan to obtain a copy of the international registration from the International Bureau prior to publication pursuant to Article 10(5), as the Office is prohibited from sending a notification of refusal prior to publication of the international registration, thus limiting the usefulness in obtaining a copy of the international registration prior to publication. With regard to use of an unpublished international registration as a ''patented'' invention for purposes of 35 U.S.C. 102(a), a secret patent is not available as prior art under 35 U.S.C. 102(a) until it is available to the public. *See In re Carlson,* 983 F.2d 1032, 1037 (Fed. Cir. 1992); MPEP 2126; *Examination Guidelines for Implementing the First-Inventor-to-File Provisions of the Leahy-Smith America Invents Act,* 77 FR 43759, 43764 (July 26, 2012) (''The phrase 'patented' in AIA 35 U.S.C. 102(a)(1) has the same meaning as 'patented' in pre-AIA 35 U.S.C. 102(a) and (b).'').

Comment 21: One comment complimented the Office on its road show educational programs in general, and particularly the Forum that was held January 14, 2014, to discuss the proposed rule changes to implement the Hague Agreement. The comment suggested that the Office should have more frequent road shows, education programs, and webinars concerning the Hague Agreement.

Response: The Office will endeavor to have additional public outreach concerning implementation of the Hague Agreement.

Comment 22: One comment requested that the Office provide a rule that states that no design rights under an international design application that designates the United States exist until a U.S. design patent actually issues from the international design application. The comment asserts that there could be instances where a patent does not issue within the period set forth in Rule 18(c), or a refusal is inadvertently not sent during the refusal period, raising an inconsistency between the lack of issuance of a U.S. design patent and Article 14(2)(a).

Response: This final rule adds § 1.1071 to clarify that a grant of protection for an industrial design that is the subject of an international registration shall only arise in the United States through the issuance of a patent pursuant to 35 U.S.C. 389(d) or 171, and in accordance with 35 U.S.C. 153. As explained in the notice of proposed rulemaking (*see* 78 FR 71870, 71886) and in this final rule, the Office does not regard the failure to send a notification of refusal within the period referenced in § 1.1062(b) to confer patent rights or other effect under Article 14(2). The PLTIA provides for enforceable rights upon issuance of a patent. *See* 35 U.S.C. 389(d); 35 U.S.C. 385.

Comment 23: Two comments suggested that U.S. law should be amended to provide for publication of design applications filed under 35 U.S.C. chapter 16 and that patent term for design patents should be 20 years from filing rather than 15 years from issuance.

Response: As the exclusion from publication of design applications filed under 35 U.S.C. chapter 16 and patent term are statutory provisions (*see* 35 U.S.C. 122(b)(2)(A)(iv); 35 U.S.C. 173), any changes would require legislation.

Rulemaking Considerations

A. Administrative Procedure Act: This rulemaking implements title I of the PLTIA and the Hague Agreement. The changes in this rulemaking (except for the setting of some fees) establish procedures for the filing, processing, and examination of international design applications and revise existing rules of practice to account for international design applications in accordance with title I of the PLTIA and to ensure that the rules of practice are consistent with the Hague Agreement. In addition, as to the applicability dates for certain provisions in existing rules, this final rule makes those applicability dates more accessible by stating them directly in the body of those rules. Therefore, the changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Bachow Commc'ns, Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims.); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.).

Accordingly, prior notice and opportunity for public comment for these changes are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). The Office, however, published the proposed changes for comment because it sought the benefit of the public's views on the Office's implementation of title I of the PLTIA and the Hague Agreement.

B. Regulatory Flexibility Act: This final rule revises the rules of practice to implement title I of the PLTIA. The changes to the rules of practice in this final rule involve: (1) The establishment of procedures for the filing, processing, and examination of international design applications; and (2) the revision of existing rules of practice to account for international design applications. In

addition, as to the applicability dates for certain provisions in existing rules, this final rule makes those applicability dates more accessible by stating them directly in the body of those rules. The final rules impose no additional required burdens on any applicant, since seeking design protection by filing an international design application is merely an optional alternative to seeking design protection by filing a national design application. The final rules will benefit applicants by streamlining the process for obtaining international protection of an industrial design in Contracting Parties to the Hague Agreement by the filing of a single, standardized international design application in a single language.

As of 2014, there are over 60 Contracting Parties that are members to the Hague system. In 2013, the most recent year available, 2,990 international design applications were filed via the Hague system. In that same year, 2,734 international design registrations issued through the Hague system. In comparison, in fiscal year 2013, the USPTO received 35,077 design applications and issued 22,453 design patents. Approximately 50% of the design applications filed in 2013 were filed by an entity claiming small entity status. None of the final rules disproportionately affect small entities.

The fees and requirements referenced in this final rulemaking do not have a significant economic impact because they are comparable to the fees and requirements an applicant has in a national design application. Section 385 requires that an ''international design application designating the United States shall have the effect, for all purposes from its filing date . . . of an application for patent filed in the Patent and Trademark Office pursuant to chapter 16.'' Such fees include an issue fee, if applicable, paid directly to the USPTO, and a petition fee for review of a filing date.

The USPTO sets only two new fees based on cost recovery: (i) A transmittal fee, payable to the USPTO for transmitting the international design application to WIPO when an applicant files the application through the USPTO as an office of indirect filing, and (ii) a petition fee when an applicant seeks to have the Office convert an international design application to a national design application under 35 U.S.C. chapter 16. The transmittal fee is set at $120. The USPTO estimates that approximately 1,000 applications designating the United States will be filed annually either through the USPTO as an office of indirect filing or with WIPO. The USPTO estimates that 900 of these applications will be filed through the USPTO as an office of indirect filing and will require payment of a transmittal fee. Of these, the Office estimates that approximately 450 will be filed by an entity that is a small entity based on USPTO design application filings in 2013. The petition fee is set at $180. The USPTO estimates that approximately 20 applicants will pay the petition fee annually, and of these, approximately 10 will be filed by an applicant that is a small entity.

The other fees mentioned in this final rulemaking are not USPTO fees at all, but rather, are created through the treaty process and WIPO's Common Regulations. For example, the USPTO does not collect and retain at the time of payment the following fees: WIPO Basic Fee, WIPO Publication Fee, WIPO Extra Word Fee, and Designation Fees (including the United States individual designation fee first part). Thus, the final rules referencing non-USPTO fees impose no economic impact upon applicants. The petition fee for excusable delay is set forth by statute, 35 U.S.C. 41(a)(7), as amended by 202(b)(1)(A) of the PLTIA, 126 Stat. 1535, at $850 for small entities and $1,700 for all other entities, beginning on December 18, 2013.

Finally, it is noted that the Office published a certification under the Regulatory Flexibility Act in the notice of proposed rulemaking. *See* 78 FR 71870, 71888–89 (Nov. 29, 2013). The Office received no public comments concerning the certification under the Regulatory Flexibility Act. For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

C. Executive Order 12866 (Regulatory Planning and Review): This final rule has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to

issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this document are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this document is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this document do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the PRA. The collection of information involved in this final rule has been submitted as a new information collection under OMB control number 0651–0075 (''International Design Applications (Hague Agreement)''). The collection will be available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

The Office is submitting this information collection to OMB for its review and approval because this notice of final rulemaking will add the following collections of information for an international design application filed through the Office or filed with the International Bureau and designating the United States as a Contracting Party in which the applicant would like protection:

(1) Application for International Registration (§ 1.1022)

(2) Claim and Reproductions (§ 1.1021)

(3) Transmittal Letter (§§ 1.4, 1.5)

(4) Appointment of a Representative (§ 1.1041)

(5) Petition to Excuse a Failure to Comply with a Time Limit (§ 1.1051)

(6) Petition to Convert to a Design Application under 35 U.S.C. chapter 16 (§ 1.1052)

(7) Petition to Review a Filing Date (§ 1.1023(b))

(8) Fee Authorization (§ 1.25)

(9) Petition to the Commissioner (§§ 1.181, 1.182, and 1.183)

(10) Transmittal of Issue Fee to USPTO for an International Design Application (§ 1.311)

(11) Declaration of Inventorship for Purposes of Designation of the United States (§ 1.63)

(12) Substitute Statement in Lieu of a Declaration of Inventorship for the Purpose of Designating the United States (§ 1.64)

(13) Assignment Cover Sheet (§§ 3.11, 3.21, 3.24, 3.26, 3.28, 3.31, 3.34, and 3.41)

I. Summary

This final rule will collect information necessary to process and examine international design applications pursuant to the Hague Agreement and the PLTIA. The Hague Agreement facilitates intellectual property protection for industrial designs through a single standardized application filed directly with the International Bureau of WIPO or indirectly through an appropriate Contracting Party's Office, such as the USPTO. The Hague Agreement is administered by the International Bureau of WIPO located in Geneva, Switzerland.

When an applicant files an international design application pursuant to this rulemaking, the International Bureau ascertains whether the international design application complies with the requirements of the treaty, records the international design application in the international register, and publishes the international registration in the International Designs Bulletin. The International Bureau then provides a copy of the publication of the international registration to each Contracting Party designated by the applicant, and thus will provide a copy to the USPTO when the United States is designated by the applicant. When the USPTO receives the international registration from the International Bureau, the USPTO will perform the substantive examination of the international design application in the same manner that it examines a domestic design application filed under 35 U.S.C. chapter 16.

Because the new application procedure for international design applications created through this final rule merely provides applicants with a new avenue by which they may file a design application, several items in this collection displace responses that the USPTO counts in other information collections, specifically Information Collections 0651–0032 (Initial Patent Applications), 0651–0043 (Patent and Trademark Financial Transactions), and 0651–0072 (America Invents Act Section 10 Patent Fee Adjustments). As such, the USPTO will temporarily double count those responses in both this collection and their original collections. The USPTO will update the burden inventories of the existing information collections to correct the double counting with the appropriate adjustments to the number of responses.

II. Data

Needs and Uses: This information collection is necessary for design applicants to file an international design application under the Hague Agreement. An applicant may file through the Office as an office of indirect filing pursuant 35 U.S.C. 382, or with the International Bureau directly. In either case, the applicant will designate the Contracting Party(ies) in which the applicant desires protection for the industrial design(s). The Office uses this information to process international design applications designating the United States and filed under the Hague Agreement.

Title of Collection: International Design Applications (Hague Agreement).

OMB Control Number: 0651–0075.

Form Number(s): WIPO DM/1. WIPO is in the process of creating forms for three items covered by this collection of information (declaration of inventorship, substitute statement in lieu of declaration, and assignment cover sheet). Once the USPTO receives

copies of these forms, the Office will provide those forms to OMB for review.

Type of Review: New Collection.

Method of Collection: By mail, hand delivery, or electronically to the Office.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 4935 per year.

Estimated Time per Response: The Office estimates that the responses in this collection will take the public approximately 15 minutes (0.25 hours) to 6 hours.

Estimated Total Annual Respondent Burden Hours: 13,128 hours per year.

Estimated Total Annual (Hour) Respondent Cost Burden: $4,987,992 per year.

Estimated Total Annual (Non-hour) Respondent Cost Burden: $2,740,011 per year. Of the non-hour costs added by this burden, $2,739,350 are filing fees and $661 are postage fees. Of the $2,739,350 filing fees, $2,130,270 are fees new to this rulemaking, whereas $609,080 are fees that the USPTO currently counts in other information collections and which the USPTO temporarily double-counts in this collection until it can update its existing collections.

III. Solicitation

The Office solicited comments to (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Office, including whether the information will have practical utility; (2) evaluate the accuracy of the Office's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Office received no comments from the members of the public regarding the PRA.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 3

Administrative practice and procedure, Patents, Trademarks.

37 CFR Part 5

Classified information, Foreign relations, Inventions and patents.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1, 3, 5, 11, and 41 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.4 is amended by revising paragraph (a)(2) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) *Correspondence in and relating to a particular application or other proceeding in the Office.* See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B of this part; of international applications in subpart C of this part; of *ex parte* reexaminations of patents in subpart D of this part; of supplemental examination of patents in subpart E of this part; of extension of patent term in subpart F of this part; of *inter partes* reexaminations of patents in subpart H of this part; of international design applications in subpart I of this part; and of the Patent Trial and Appeal Board in parts 41 and 42 of this chapter.

* * * * *

■ 3. Section 1.5 is amended by revising paragraph (a) to read as follows:

§ 1.5 Identification of patent, patent application, or patent-related proceeding.

(a) No correspondence relating to an application should be filed prior to receipt of the assigned application number (*i.e.,* U.S. application number, international application number, or international registration number as appropriate). When correspondence directed to the Patent and Trademark Office concerns a previously filed application for a patent, it must identify on the top page in a conspicuous location, the application number (consisting of the series code and the serial number; *e.g.,* 07/123,456), or the serial number and filing date assigned to that application by the Patent and Trademark Office, or the international application number of the international application, or the international registration number of an international design application. Any correspondence not containing such identification will be returned to the sender where a return address is available. The returned correspondence will be accompanied with a cover letter, which will indicate to the sender that if the returned correspondence is resubmitted to the Patent and Trademark Office within two weeks of the mail date on the cover letter, the original date of receipt of the correspondence will be considered by the Patent and Trademark Office as the date of receipt of the correspondence. Applicants may use either the Certificate of Mailing or Transmission procedure under § 1.8 or the Priority Mail Express® procedure under § 1.10 for resubmissions of returned correspondence if they desire to have the benefit of the date of deposit in the United States Postal Service. If the returned correspondence is not resubmitted within the two-week period, the date of receipt of the resubmission will be considered to be the date of receipt of the correspondence. The two-week period to resubmit the returned correspondence will not be extended. In addition to the application number, all correspondence directed to the Patent and Trademark Office concerning applications for patent should also state the name of the first listed inventor, the title of the invention, the date of filing the same, and if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the correspondence and the name of the examiner or other person to which it has been assigned.

* * * * *

■ 4. Section 1.6 is amended by revising paragraphs (d)(3), (4), and (6) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) * * *

(3) Correspondence that cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2)(i)(A) through (D), (F), (I), and (K) and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile;

(4) Color drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.173, 1.437, or 1.1026;

* * * * *

(6) Correspondence to be filed in an application subject to a secrecy order under §§ 5.1 through 5.5 of this chapter and directly related to the secrecy order content of the application;

* * * * *

■ 5. Section 1.8 is amended by revising paragraphs (a)(2)(i)(I) and (J) and adding paragraph (a)(2)(i)(K) to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) * * *

(2) * * *

(i) * * *

(I) The filing of a third-party submission under § 1.290;

(J) The calculation of any period of adjustment, as specified in § 1.703(f); and

(K) The filing of an international design application.

* * * * *

■ 6. Section 1.9 is amended by revising paragraphs (a)(1) and (3) and adding paragraphs (l), (m), and (n) to read as follows:

§ 1.9 Definitions.

(a)(1) A national application as used in this chapter means either a U.S. application for patent which was filed in the Office under 35 U.S.C. 111, an international application filed under the Patent Cooperation Treaty in which the basic national fee under 35 U.S.C. 41(a)(1)(F) has been paid, or an international design application filed under the Hague Agreement in which the Office has received a copy of the international registration pursuant to Hague Agreement Article 10.

* * * * *

(3) A nonprovisional application as used in this chapter means either a U.S. national application for patent which was filed in the Office under 35 U.S.C. 111(a), an international application filed under the Patent Cooperation Treaty in which the basic national fee under 35 U.S.C. 41(a)(1)(F) has been paid, or an international design application filed under the Hague Agreement in which the Office has received a copy of the international registration pursuant to Hague Agreement Article 10.

* * * * *

(l) Hague Agreement as used in this chapter means the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted at Geneva, Switzerland, on July 2, 1999, and Hague Agreement Article as used in this chapter means an Article under the Hague Agreement.

(m) Hague Agreement Regulations as used in this chapter means the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement, and Hague Agreement Rule as used in this chapter means one of the Hague Agreement Regulations.

(n) An international design application as used in this chapter means an application for international registration of a design filed under the Hague Agreement. Unless otherwise clear from the wording, reference to ''design application'' or ''application for a design patent'' in this chapter includes an international design application that designates the United States.

■ 7. Section 1.14 is amended by revising the introductory text of paragraph (a)(1), revising paragraphs (a)(1)(ii) through (vii) and (a)(2)(iv), and adding paragraph (j) to read as follows:

§ 1.14 Patent applications preserved in confidence.

(a) * * *

(1) Records associated with patent applications (see paragraph (g) of this section for international applications and paragraph (j) of this section for international design applications) may be available in the following situations:

* * * * *

(ii) *Published abandoned applications.* The file of an abandoned published application is available to the public as set forth in § 1.11(a). A copy of the application-as-filed, the file contents of the published application, or a specific document in the file of the published application may be provided to any person upon request and payment of the appropriate fee set forth in § 1.19(b).

(iii) *Published pending applications.* A copy of the application-as-filed, the file contents of the application, or a specific document in the file of a pending published application may be provided to any person upon request and payment of the appropriate fee set forth in § 1.19(b). If a redacted copy of the application was used for the patent application publication, the copy of the specification, drawings, and papers may be limited to a redacted copy. The Office will not provide access to the paper file of a pending application that has been published, except as provided in paragraph (c) or (i) of this section.

(iv) *Unpublished abandoned applications (including provisional applications) that are identified or relied upon.* The file contents of an unpublished, abandoned application may be made available to the public if the application is identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3) of an international design application designating the United States. An application is considered to have been identified in a document, such as a patent, when the application number or serial number and filing date, first named inventor, title, and filing date or other application specific information are provided in the text of the patent, but not when the same identification is made in a paper in the file contents of the patent and is not included in the printed patent. Also, the file contents may be made available to the public, upon a written request, if benefit of the abandoned application is claimed under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent, or has published as a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). A copy of the application-as-filed, the file contents of the application, or a specific document in the file of the application may be provided to any person upon written request and payment of the appropriate fee (§ 1.19(b)).

(v) *Unpublished pending applications (including provisional applications) whose benefit is claimed.* A copy of the file contents of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(b)), if the benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent, or in an application that has published as a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). A copy of the application-as-filed or a specific document in the file of the pending application may also be provided to any person upon written request and payment of the appropriate fee (§ 1.19(b)). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (i) of this section.

(vi) *Unpublished pending applications (including provisional applications) that are incorporated by reference or otherwise identified.* A copy of the application as originally filed of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(b)), if the application is incorporated by reference or otherwise identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3) of an international design application designating the United States. The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (i) of this section.

(vii) *When a petition for access or a power to inspect is required.* Applications that were not published or patented, that are not the subject of a benefit claim under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3), or are not identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3) of an international design application designating the United States, are not available to the public. If an application is identified in the file contents of another application, but not the published patent application or patent itself, a granted petition for access (see paragraph (i)) or a power to inspect (see paragraph (c) of this section) is necessary to obtain the application, or a copy of the application.

(2) * * *

(iv) Whether another application claims the benefit of the application (*i.e.,* whether there are any applications that claim the benefit of the filing date under 35 U.S.C. 119(e), 120, 121, 365, or 386 of the application), and if there are any such applications, the numerical identifier of the application, the specified relationship between the applications (*e.g.,* continuation), whether the application is pending, abandoned or patented, and whether the application has been published under 35 U.S.C. 122(b).

* * * * *

(j) *International design applications.* (1) With respect to an international design application maintained by the Office in its capacity as a designated office (§ 1.1003) for national processing, the records associated with the international design application may be made available as provided under paragraphs (a) through (i) of this section.

(2) With respect to an international design application maintained by the Office in its capacity as an office of indirect filing (§ 1.1002), the records of the international design application may be made available under paragraph (j)(1) of this section where contained in the file of the international design application maintained by the Office for national processing. Also, if benefit of the international design application is claimed under 35 U.S.C. 386(c) in a U.S. patent or published application, the file contents of the application may be made available to the public, or the file contents of the application, a copy of the application-as-filed, or a specific document in the file of the application may be provided to any person upon written request and payment of the appropriate fee (§ 1.19(b)).

■ 8. Section 1.16 is amended by revising the introductory text of paragraphs (b), (l), and (p) to read as follows:

§ 1.16 National application filing, search, and examination fees.

* * * * *

(b) Basic fee for filing each application under 35 U.S.C. 111 for an original design patent:

* * * * *

(l) Search fee for each application under 35 U.S.C. 111 for an original design patent:

* * * * *

(p) Examination fee for each application under 35 U.S.C. 111 for an original design patent:

* * * * *

■ 9. Section 1.17 is amended by revising paragraphs (f), (g), (i)(1), and (m) and adding paragraph (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(f) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$100.00
By a small entity (§ 1.27(a))	200.00
By other than a small or micro entity	400.00

§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

§ 1.53(e)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for in an application for patent.

§ 1.183—to suspend the rules in an application for patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

§ 1.1023—to review the filing date of an international design application.

(g) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$50.00
By a small entity (§ 1.27(a))	100.00
By other than a small or micro entity	200.00

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.46—for filing an application on behalf of an inventor by a person who otherwise shows sufficient proprietary interest in the matter.

§ 1.55(f)—for filing a belated certified copy of a foreign application.

§ 1.55(g)—for filing a belated certified copy of a foreign application.

§ 1.57(a)—for filing a belated certified copy of a foreign application.

§ 1.59—for expungement of information.

§ 1.103(a)—to suspend action in an application.

§ 1.136(b)—for review of a request for extension of time when the provisions of § 1.136(a) are not available.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.

§ 1.956—for patent owner requests for extension of time in *inter partes* reexamination proceedings.

§ 5.12—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

* * * * *

(i) *Processing fees.* (1) For taking action under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$35.00
By a small entity (§ 1.27(a))	70.00
By other than a small or micro entity	140.00

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.29(k)(3)—for processing a non-itemized fee deficiency based on an error in micro entity status.

§ 1.41(b)—for supplying the name or names of the inventor or joint inventors in an application without either an application data sheet or the inventor's oath or declaration, except in provisional applications.

§ 1.48—for correcting inventorship, except in provisional applications.

§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(c)(3)—t convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.71(g)(2)—for processing a belated amendment under § 1.71(g).

§ 1.102(e)—for requesting prioritized examination of an application.

§ 1.103(b)—for requesting limited suspension of action, continued prosecution application for a design patent (§ 1.53(d)).

§ 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d)—for requesting deferred examination of an application.

§ 1.291(c)(5)—for processing a second or subsequent protest by the same real party in interest.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

(m) For filing a petition for the revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, for the extension of the twelve-month (six-month for designs) period for filing a subsequent application (§§ 1.55(c), 1.55(e), 1.78(b), 1.78(c), 1.78(e), 1.137, 1.378, and 1.452), or for filing a petition to excuse applicant's failure to act within prescribed time limits in an international design application (§ 1.1051):

By a small entity (§ 1.27(a)) or micro entity (§ 1.29)	$850.00
By other than a small or micro entity	1,700.00

* * * * *

(t) For filing a petition to convert an international design application to a design application under 35 U.S.C. chapter 16 (§ 1.1052): $180.00.

■ 10. Section 1.18 is amended by adding paragraph (b)(3) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

* * * * *

(b) * * *

(3) For an international design application designating the United States, where an issue fee is paid through the International Bureau (Hague Agreement Rule 12(3)(c)) as an alternative to paying the issue fee under paragraph (b)(1) of this section: The amount specified on the Web site of the World Intellectual Property Organization, currently available at *http://www.wipo.int/hague,* at the time the fee is paid.

* * * * *

■ 11. Section 1.25 is amended by revising paragraph (b) to read as follows:

§ 1.25 Deposit accounts.

* * * * *

(b) Filing, issue, appeal, international-type search report, international application processing, international design application fees, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 through 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with a particular paper filed. A general authorization to charge fees in an international design application set forth in § 1.1031 will only be effective for the transmittal fee (§ 1.1031(a)). An authorization to charge fees under § 1.16 in an international application entering the national stage under 35 U.S.C. 371 will be treated as an authorization to charge fees under § 1.492. An authorization to charge fees set forth in § 1.18 to a deposit account is subject to the provisions of § 1.311(b). An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 or 1.913 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination, and an authorization to charge to a deposit account the fee for a request for supplemental examination pursuant to § 1.610 and any other fees required in a supplemental examination proceeding in a patent may also be filed with the request for supplemental examination. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective unless sufficient funds are present in the account to cover the fee.

* * * * *

■ 12. Section 1.27 is amended by revising paragraph (c)(3) introductory text to read as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

* * * * *

(c) * * *

(3) *Assertion by payment of the small entity basic filing, basic transmittal, basic national fee, international search fee, or individual designation fee in an international design application.* The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in § 1.16(a), (b), (c), (d), or (e), the small entity transmittal fee set forth in § 1.445(a)(1), the small entity international search fee set forth in § 1.445(a)(2) to a Receiving Office other than the United States Receiving Office in the exact amount established for that Receiving Office pursuant to PCT Rule 16, or the small entity basic national fee set forth in § 1.492(a), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing, basic transmittal, or basic national fee is inadvertently selected in error. The payment, by any party, of the small entity first part of the individual designation fee for the United States to the International Bureau (§ 1.1031) will be treated as a written assertion of entitlement to small entity status.

* * * * *

■ 13. Section 1.29 is amended by revising paragraph (e) to read as follows:

§ 1.29 Micro entity status.

* * * * *

(e) Micro entity status is established in an application by filing a micro entity certification in writing complying with the requirements of either paragraph (a) or (d) of this section and signed either in compliance with § 1.33(b), in an international application filed in a Receiving Office other than the United States Receiving Office by a person authorized to represent the applicant under § 1.455, or in an international design application by a person authorized to represent the applicant under § 1.1041 before the International Bureau where the micro entity certification is filed with the International Bureau. Status as a micro entity must be specifically established in each related, continuing and reissue

application in which status is appropriate and desired. Status as a micro entity in one application or patent does not affect the status of any other application or patent, regardless of the relationship of the applications or patents. The refiling of an application under § 1.53 as a continuation, divisional, or continuation-in-part application (including a continued prosecution application under § 1.53(d)), or the filing of a reissue application, requires a new certification of entitlement to micro entity status for the continuing or reissue application.

* * * * *

■ 14. Section 1.32 is amended by revising paragraph (d) introductory text to read as follows:

§ 1.32 Power of attorney.

* * * * *

(d) A power of attorney from a prior national application for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) in a continuing application may have effect in the continuing application if a copy of the power of attorney from the prior application is filed in the continuing application unless:

* * * * *

■ 15. Section 1.41 is amended by adding paragraph (f) to read as follows:

§ 1.41 Inventorship.

* * * * *

(f) The inventorship of an international design application designating the United States is the creator or creators set forth in the publication of the international registration under Hague Agreement Article 10(3). Any correction of inventorship must be pursuant to § 1.48.

■ 16. Section 1.46 is amended by revising paragraph (b) introductory text and paragraph (c) to read as follows:

§ 1.46 Application for patent by an assignee, obligated assignee, or a person who otherwise shows sufficient proprietary interest in the matter.

* * * * *

(b) If an application under 35 U.S.C. 111 is made by a person other than the inventor under paragraph (a) of this section, the application must contain an application data sheet under § 1.76 specifying in the applicant information section (§ 1.76(b)(7)) the assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter. If an application entering the national stage under 35 U.S.C. 371, or a nonprovisional international design application, is applied for by a person other than the inventor under paragraph (a) of this section, the assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter must have been identified as the applicant for the United States in the international stage of the international application or as the applicant in the publication of the international registration under Hague Agreement Article 10(3).

* * * * *

(c)(1) *Correction or update in the name of the applicant.* Any request to correct or update the name of the applicant under this section must include an application data sheet under § 1.76 specifying the correct or updated name of the applicant in the applicant information section (§ 1.76(b)(7)) in accordance with § 1.76(c)(2). A change in the name of the applicant recorded pursuant to Hague Agreement Article 16(1)(ii) will be effective to change the name of the applicant in a nonprovisional international design application.

(2) *Change in the applicant.* Any request to change the applicant under this section after an original applicant has been specified must include an application data sheet under § 1.76 specifying the applicant in the applicant information section (§ 1.76(b)(7)) in accordance with § 1.76(c)(2) and comply with §§ 3.71 and 3.73 of this title.

* * * * *

■ 17. Section 1.53 is amended by revising paragraph (b) introductory text and paragraphs (c)(4) and (d)(1)(ii) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(b) *Application filing requirements—Nonprovisional application.* The filing date of an application for patent filed under this section, other than an application for a design patent or a provisional application under paragraph (c) of this section, is the date on which a specification, with or without claims, is received in the Office. The filing date of an application for a design patent filed under this section, except for a continued prosecution application under paragraph (d) of this section, is the date on which the specification as prescribed by 35 U.S.C. 112, including at least one claim, and any required drawings are received in the Office. No new matter may be introduced into an application after its filing date. A continuing application, which may be a continuation, divisional, or continuation-in-part application, may be filed under the conditions specified in 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78.

* * * * *

(c) * * *

(4) A provisional application is not entitled to the right of priority under 35 U.S.C. 119, 365(a), or 386(a) or § 1.55, or to the benefit of an earlier filing date under 35 U.S.C. 120, 121, 365(c), or 386(c) or § 1.78 of any other application. No claim for priority under 35 U.S.C. 119(e) or § 1.78(a) may be made in a design application based on a provisional application. The requirements of §§ 1.821 through 1.825 regarding application disclosures containing nucleotide and/or amino acid sequences are not mandatory for provisional applications.

(d) * * *

(1) * * *

(ii) The prior nonprovisional application is a design application, but not an international design application, that is complete as defined by § 1.51(b), except for the inventor's oath or declaration if the application is filed on or after September 16, 2012, and the prior nonprovisional application contains an application data sheet meeting the conditions specified in § 1.53(f)(3)(i); and

* * * * *

■ 18. Section 1.55 is revised to read as follows:

§ 1.55 Claim for foreign priority.

(a) *In general.* An applicant in a nonprovisional application may claim priority to one or more prior foreign applications under the conditions specified in 35 U.S.C. 119(a) through (d) and (f), 172, 365(a) and (b), and 386(a) and (b) and this section.

(b) *Time for filing subsequent application.* The nonprovisional application must be:

(1) Filed not later than twelve months (six months in the case of a design application) after the date on which the foreign application was filed, subject to paragraph (c) of this section (a subsequent application); or

(2) Entitled to claim the benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) of a subsequent application that was filed within the period set forth in paragraph (b)(1) of this section.

(c) *Delayed filing of subsequent application.* If the subsequent application has a filing date which is after the expiration of the period set forth in paragraph (b)(1) of this section, but within two months from the expiration of the period set forth in paragraph (b)(1) of this section, the right of priority in the subsequent application may be restored under PCT Rule 26*bis*.3

for an international application, or upon petition pursuant to this paragraph, if the delay in filing the subsequent application within the period set forth in paragraph (b)(1) of this section was unintentional. A petition to restore the right of priority under this paragraph filed on or after May 13, 2015, must be filed in the subsequent application, or in the earliest nonprovisional application claiming benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) to the subsequent application, if such subsequent application is not a nonprovisional application. Any petition to restore the right of priority under this paragraph must include:

(1) The priority claim under 35 U.S.C. 119(a) through (d) or (f), 365(a) or (b), or 386(a) or (b) in an application data sheet (§ 1.76(b)(6)), identifying the foreign application to which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, unless previously submitted;

(2) The petition fee as set forth in § 1.17(m); and

(3) A statement that the delay in filing the subsequent application within the period set forth in paragraph (b)(1) of this section was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(d) *Time for filing priority claim*—(1) *Application under 35 U.S.C. 111(a).* The claim for priority must be filed within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application in an original application filed under 35 U.S.C. 111(a), except as provided in paragraph (e) of this section. The claim for priority must be presented in an application data sheet (§ 1.76(b)(6)) and must identify the foreign application to which priority is claimed by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. The time periods in this paragraph do not apply if the later-filed application is:

(i) An application for a design patent; or

(ii) An application filed under 35 U.S.C. 111(a) before November 29, 2000.

(2) *Application under 35 U.S.C. 371.* The claim for priority must be made within the time limit set forth in the PCT and the Regulations under the PCT in an international application entering the national stage under 35 U.S.C. 371, except as provided in paragraph (e) of this section.

(e) *Delayed priority claim.* Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a) through (d) or (f), 365(a) or (b), or 386(a) or 386(b) not presented in the manner required by paragraph (d) or (m) of this section during pendency and within the time period provided by paragraph (d) of this section (if applicable) is considered to have been waived. If a claim for priority is considered to have been waived under this section, the claim may be accepted if the priority claim was unintentionally delayed. A petition to accept a delayed claim for priority under 35 U.S.C. 119(a) through (d) or (f), 365(a) or (b), or 386(a) or 386(b) must be accompanied by:

(1) The priority claim under 35 U.S.C. 119(a) through (d) or (f), 365(a) or (b), or 386(a) or 386(b) in an application data sheet (§ 1.76(b)(6)), identifying the foreign application to which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, unless previously submitted;

(2) A certified copy of the foreign application, unless previously submitted or an exception in paragraph (h), (i), or (j) of this section applies;

(3) The petition fee as set forth in § 1.17(m); and

(4) A statement that the entire delay between the date the priority claim was due under this section and the date the priority claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(f) *Time for filing certified copy of foreign application*—(1) *Application under 35 U.S.C. 111(a).* A certified copy of the foreign application must be filed within the later of four months from the actual filing date of the application, or sixteen months from the filing date of the prior foreign application, in an original application under 35 U.S.C. 111(a) filed on or after March 16, 2013, except as provided in paragraphs (h), (i), and (j) of this section. The time period in this paragraph does not apply in a design application.

(2) *Application under 35 U.S.C. 371.* A certified copy of the foreign application must be filed within the time limit set forth in the PCT and the Regulations under the PCT in an international application entering the national stage under 35 U.S.C. 371. If a certified copy of the foreign application is not filed during the international stage in an international application in which the national stage commenced on or after December 18, 2013, a certified copy of the foreign application must be filed within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) (§ 1.491(a)), four months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage, or sixteen months from the filing date of the prior foreign application, except as provided in paragraphs (h), (i), and (j) of this section.

(3) If a certified copy of the foreign application is not filed within the time period specified paragraph (f)(1) of this section in an application under 35 U.S.C. 111(a) or within the period specified in paragraph (f)(2) of this section in an international application entering the national stage under 35 U.S.C. 371, and an exception in paragraph (h), (i), or (j) of this section is not applicable, the certified copy of the foreign application must be accompanied by a petition including a showing of good and sufficient cause for the delay and the petition fee set forth in § 1.17(g).

(g) *Requirement for filing priority claim, certified copy of foreign application, and translation in any application.* (1) The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event, be filed within the pendency of the application, unless filed with a petition under paragraph (e) or (f) of this section, or with a petition accompanied by the fee set forth in § 1.17(g) which includes a showing of good and sufficient cause for the delay in filing the certified copy of the foreign application in a design application. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, the patent will not include the priority claim unless corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323.

(2) The Office may require that the claim for priority and the certified copy of the foreign application be filed earlier than otherwise provided in this section:

(i) When the application is involved in an interference (see § 41.202 of this chapter) or derivation (see part 42 of this chapter) proceeding;

(ii) When necessary to overcome the date of a reference relied upon by the examiner; or

(iii) When deemed necessary by the examiner.

(3) An English language translation of a non-English language foreign application is not required except:

(i) When the application is involved in an interference (see § 41.202 of this chapter) or derivation (see part 42 of this chapter) proceeding;

(ii) When necessary to overcome the date of a reference relied upon by the examiner; or

(iii) When specifically required by the examiner.

(4) If an English language translation of a non-English language foreign application is required, it must be filed together with a statement that the translation of the certified copy is accurate.

(h) *Certified copy in another U.S. patent or application.* The requirement in paragraphs (f) and (g) of this section for a certified copy of the foreign application will be considered satisfied in a reissue application if the patent for which reissue is sought satisfies the requirement of this section for a certified copy of the foreign application and such patent is identified as containing a certified copy of the foreign application. The requirement in paragraphs (f) and (g) of this section for a certified copy of the foreign application will also be considered satisfied in an application if a prior-filed nonprovisional application for which a benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) contains a certified copy of the foreign application and such prior-filed nonprovisional application is identified as containing a certified copy of the foreign application.

(i) *Foreign intellectual property office participating in a priority document exchange agreement.* The requirement in paragraphs (f) and (g) of this section for a certified copy of the foreign application to be filed within the time limit set forth therein will be considered satisfied if:

(1) The foreign application was filed in a foreign intellectual property office participating with the Office in a bilateral or multilateral priority document exchange agreement (participating foreign intellectual property office), or a copy of the foreign application was filed in an application subsequently filed in a participating foreign intellectual property office that permits the Office to obtain such a copy;

(2) The claim for priority is presented in an application data sheet (§ 1.76(b)(6)), identifying the foreign application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, and the applicant provides the information necessary for the participating foreign intellectual property office to provide the Office with access to the foreign application;

(3) The copy of the foreign application is received by the Office from the participating foreign intellectual property office, or a certified copy of the foreign application is filed, within the period specified in paragraph (g)(1) of this section; and

(4) The applicant files in a separate document a request that the Office obtain a copy of the foreign application from a participating intellectual property office that permits the Office to obtain such a copy where, although the foreign application was not filed in a participating foreign intellectual property office, a copy of the foreign application was filed in an application subsequently filed in a participating foreign intellectual property office that permits the Office to obtain such a copy. The request must identify the participating intellectual property office and the subsequent application by the application number, day, month, and year of its filing in which a copy of the foreign application was filed. The request must be filed within the later of sixteen months from the filing date of the prior foreign application, four months from the actual filing date of an application under 35 U.S.C. 111(a), four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) (§ 1.491(a)), or four months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage, or the request must be accompanied by a petition under paragraph (e) or (f) of this section.

(j) *Interim copy.* The requirement in paragraph (f) of this section for a certified copy of the foreign application to be filed within the time limit set forth therein will be considered satisfied if:

(1) A copy of the original foreign application clearly labeled as ''Interim Copy,'' including the specification, and any drawings or claims upon which it is based, is filed in the Office together with a separate cover sheet identifying the foreign application by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, and stating that the copy filed in the Office is a true copy of the original application as filed in the foreign country (or intellectual property authority);

(2) The copy of the foreign application and separate cover sheet are filed within the later of sixteen months from the filing date of the prior foreign application, four months from the actual filing date of an application under 35 U.S.C. 111(a), four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) (§ 1.491(a)), four months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage, or with a petition under paragraph (e) or (f) of this section; and

(3) A certified copy of the foreign application is filed within the period specified in paragraph (g)(1) of this section.

(k) *Requirements for certain applications filed on or after March 16, 2013.* If a nonprovisional application filed on or after March 16, 2013, other than a nonprovisional international design application, claims priority to a foreign application filed prior to March 16, 2013, and also contains, or contained at any time, a claim to a claimed invention that has an effective filing date as defined in § 1.109 that is on or after March 16, 2013, the applicant must provide a statement to that effect within the later of four months from the actual filing date of the nonprovisional application, four months from the date of entry into the national stage as set forth in § 1.491 in an international application, sixteen months from the filing date of the prior foreign application, or the date that a first claim to a claimed invention that has an effective filing date on or after March 16, 2013, is presented in the nonprovisional application. An applicant is not required to provide such a statement if the applicant reasonably believes on the basis of information already known to the individuals designated in § 1.56(c) that the nonprovisional application does not, and did not at any time, contain a claim to a claimed invention that has an effective filing date on or after March 16, 2013.

(l) *Inventor's certificates.* An applicant in a nonprovisional application may under certain circumstances claim priority on the basis of one or more applications for an inventor's certificate in a country granting both inventor's certificates and patents. To claim the right of priority on the basis of an application for an inventor's certificate in such a country under 35 U.S.C. 119(d), the applicant, when submitting a claim for such right as specified in this section, must include an affidavit or declaration. The affidavit or declaration must include a specific statement that, upon an investigation, he or she is satisfied that to the best of his or her knowledge, the applicant, when filing the application for the inventor's certificate, had the option to file an application for either a patent or an inventor's certificate as to the subject matter of the identified claim or claims forming the basis for the claim of priority.

(m) *Time for filing priority claim and certified copy of foreign application in an international design application designating the United States.* In an international design application

designating the United States, the claim for priority may be made in accordance with the Hague Agreement and the Hague Agreement Regulations. In a nonprovisional international design application, the priority claim, unless made in accordance with the Hague Agreement and the Hague Agreement Regulations, must be presented in an application data sheet (§ 1.76(b)(6)), identifying the foreign application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. In a nonprovisional international design application, the priority claim and certified copy must be furnished in accordance with the time period and other conditions set forth in paragraph (g) of this section.

(n) *Applications filed before September 16, 2012.* Notwithstanding the requirement in paragraphs (d)(1), (e)(1), and (i)(2) of this section that any priority claim be presented in an application data sheet (§ 1.76), this requirement in paragraphs (d)(1), (e)(1), and (i)(2) of this section will be satisfied by the presentation of such priority claim in the oath or declaration under § 1.63 in a nonprovisional application filed under 35 U.S.C. 111(a) before September 16, 2012, or resulting from an international application filed under 35 U.S.C. 363 before September 16, 2012. The provisions of this paragraph do not apply to any priority claim submitted for a petition under paragraph (c) of this section to restore the right of priority to a foreign application.

(o) *Priority under 35 U.S.C. 386(a) or (b).* The right of priority under 35 U.S.C. 386(a) or (b) with respect to an international design application is applicable only to nonprovisional applications, international applications, and international design applications filed on or after May 13, 2015, and patents issuing thereon.

(p) *Time periods in this section.* The time periods set forth in this section are not extendable, but are subject to 35 U.S.C. 21(b) (and § 1.7(a)), PCT Rule 80.5, and Hague Agreement Rule 4(4).

■ 19. Section 1.57 is amended by revising paragraph (a)(4) and the introductory text of paragraph (b) and adding paragraph (b)(4) to read as follows:

§ 1.57 Incorporation by reference.

(a) * * *

(4) A certified copy of the previously filed application must be filed in the Office, unless the previously filed application is an application filed under 35 U.S.C. 111 or 363, or the previously filed application is a foreign priority application and the conditions set forth in § 1.55(i) are satisfied with respect to such foreign priority application. The certified copy of the previously filed application, if required by this paragraph, must be filed within the later of four months from the filing date of the application or sixteen months from the filing date of the previously filed application, or be accompanied by a petition including a showing of good and sufficient cause for the delay and the petition fee set forth in § 1.17(g).

(b) Subject to the conditions and requirements of this paragraph, if all or a portion of the specification or drawing(s) is inadvertently omitted from an application, but the application contains a claim under § 1.55 for priority of a prior-filed foreign application or a claim under § 1.78 for the benefit of a prior-filed provisional, nonprovisional, international application, or international design application, that was present on the filing date of the application, and the inadvertently omitted portion of the specification or drawing(s) is completely contained in the prior-filed application, the claim under § 1.55 or 1.78 shall also be considered an incorporation by reference of the prior-filed application as to the inadvertently omitted portion of the specification or drawing(s).

* * * * *

(4) Any amendment to an international design application pursuant to paragraph (b)(1) of this section shall be effective only as to the United States and shall have no effect on the filing date of the application. In addition, no request under this section to add the inadvertently omitted portion of the specification or drawings in an international design application will be acted upon by the Office prior to the international design application becoming a nonprovisional application.

* * * * *

■ 20. Section 1.63 is amended by revising paragraph (d)(1) to read as follows:

§ 1.63 Inventor's oath or declaration.

* * * * *

(d)(1) A newly executed oath or declaration under § 1.63, or substitute statement under § 1.64, is not required under §§ 1.51(b)(2) and 1.53(f), or under §§ 1.497 and 1.1021(d), for an inventor in a continuing application that claims the benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) in compliance with § 1.78 of an earlier-filed application, provided that an oath or declaration in compliance with this section, or substitute statement under § 1.64, was executed by or with respect to such inventor and was filed in the earlier-filed application, and a copy of such oath, declaration, or substitute statement showing the signature or an indication thereon that it was executed, is submitted in the continuing application.

* * * * *

■ 21. Section 1.76 is amended by revising paragraphs (a), (b)(5), and (b)(6) to read as follows:

§ 1.76 Application data sheet.

(a) *Application data sheet.* An application data sheet is a sheet or sheets that may be submitted in a provisional application under 35 U.S.C. 111(b), a nonprovisional application under 35 U.S.C. 111(a), a nonprovisional international design application, or a national stage application under 35 U.S.C. 371 and must be submitted when required by § 1.55 or 1.78 to claim priority to or the benefit of a prior-filed application under 35 U.S.C. 119, 120, 121, 365, or 386. An application data sheet must be titled ''Application Data Sheet.'' An application data sheet must contain all of the section headings listed in paragraph (b) of this section, except as provided in paragraph (c)(2) of this section, with any appropriate data for each section heading. If an application data sheet is provided, the application data sheet is part of the application for which it has been submitted.

(b) * * *

(5) *Domestic benefit information.* This information includes the application number, the filing date, the status (including patent number if available), and relationship of each application for which a benefit is claimed under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c). Providing this information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120 and § 1.78.

(6) *Foreign priority information.* This information includes the application number, country (or intellectual property authority), and filing date of each foreign application for which priority is claimed. Providing this information in the application data sheet constitutes the claim for priority as required by 35 U.S.C. 119(b) and § 1.55.

* * * * *

■ 22. Section 1.78 is revised to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) *Claims under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional*

application. An applicant in a nonprovisional application, other than for a design patent, or an international application designating the United States may claim the benefit of one or more prior-filed provisional applications under the conditions set forth in 35 U.S.C. 119(e) and this section.

(1) The nonprovisional application or international application designating the United States must be:

(i) Filed not later than twelve months after the date on which the provisional application was filed, subject to paragraph (b) of this section (a subsequent application); or

(ii) Entitled to claim the benefit under 35 U.S.C. 120, 121, or 365(c) of a subsequent application that was filed within the period set forth in paragraph (a)(1)(i) of this section.

(2) Each prior-filed provisional application must name the inventor or a joint inventor named in the later-filed application as the inventor or a joint inventor. In addition, each prior-filed provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(d) must have been paid for such provisional application within the time period set forth in § 1.53(g).

(3) Any nonprovisional application or international application designating the United States that claims the benefit of one or more prior-filed provisional applications must contain, or be amended to contain, a reference to each such prior-filed provisional application, identifying it by the provisional application number (consisting of series code and serial number). If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76(b)(5)).

(4) The reference required by paragraph (a)(3) of this section must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed provisional application. If the later-filed application is a nonprovisional application entering the national stage from an international application under 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) (§ 1.491(a)), four months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage, or sixteen months from the filing date of the prior-filed provisional application. Except as provided in paragraph (c) of this section, failure to timely submit the reference is considered a waiver of any benefit under 35 U.S.C. 119(e) of the prior-filed provisional application. The time periods in this paragraph do not apply if the later-filed application is:

(i) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(ii) An international application filed under 35 U.S.C. 363 before November 29, 2000.

(5) If the prior-filed provisional application was filed in a language other than English and both an English-language translation of the prior-filed provisional application and a statement that the translation is accurate were not previously filed in the prior-filed provisional application, the applicant will be notified and given a period of time within which to file, in the prior-filed provisional application, the translation and the statement. If the notice is mailed in a pending nonprovisional application, a timely reply to such a notice must include the filing in the nonprovisional application of either a confirmation that the translation and statement were filed in the provisional application, or an application data sheet (§ 1.76(b)(5)) eliminating the reference under paragraph (a)(3) of this section to the prior-filed provisional application, or the nonprovisional application will be abandoned. The translation and statement may be filed in the provisional application, even if the provisional application has become abandoned.

(6) If a nonprovisional application filed on or after March 16, 2013, claims the benefit of the filing date of a provisional application filed prior to March 16, 2013, and also contains, or contained at any time, a claim to a claimed invention that has an effective filing date as defined in § 1.109 that is on or after March 16, 2013, the applicant must provide a statement to that effect within the later of four months from the actual filing date of the nonprovisional application, four months from the date of entry into the national stage as set forth in § 1.491 in an international application, sixteen months from the filing date of the prior-filed provisional application, or the date that a first claim to a claimed invention that has an effective filing date on or after March 16, 2013, is presented in the nonprovisional application. An applicant is not required to provide such a statement if the applicant reasonably believes on the basis of information already known to the individuals designated in § 1.56(c) that the nonprovisional application does not, and did not at any time, contain a claim to a claimed invention that has an effective filing date on or after March 16, 2013.

(b) *Delayed filing of the subsequent nonprovisional application or international application designating the United States.* If the subsequent nonprovisional application or international application designating the United States has a filing date which is after the expiration of the twelve-month period set forth in paragraph (a)(1)(i) of this section but within two months from the expiration of the period set forth in paragraph (a)(1)(i) of this section, the benefit of the provisional application may be restored under PCT Rule 26*bis*.3 for an international application, or upon petition pursuant to this paragraph, if the delay in filing the subsequent nonprovisional application or international application designating the United States within the period set forth in paragraph (a)(1)(i) of this section was unintentional.

(1) A petition to restore the benefit of a provisional application under this paragraph filed on or after May 13, 2015, must be filed in the subsequent application, and any petition to restore the benefit of a provisional application under this paragraph must include:

(i) The reference required by 35 U.S.C. 119(e) to the prior-filed provisional application in an application data sheet (§ 1.76(b)(5)) identifying it by provisional application number (consisting of series code and serial number), unless previously submitted;

(ii) The petition fee as set forth in § 1.17(m); and

(iii) A statement that the delay in filing the subsequent nonprovisional application or international application designating the United States within the twelve-month period set forth in paragraph (a)(1)(i) of this section was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(2) The restoration of the right of priority under PCT Rule 26*bis*.3 to a provisional application does not affect the requirement to include the reference required by paragraph (a)(3) of this section to the provisional application in a national stage application under 35 U.S.C. 371 within the time period provided by paragraph (a)(4) of this section to avoid the benefit claim being considered waived.

(c) *Delayed claims under 35 U.S.C. 119(e) for the benefit of a prior-filed*

provisional application. If the reference required by 35 U.S.C. 119(e) and paragraph (a)(3) of this section is presented in an application after the time period provided by paragraph (a)(4) of this section, the claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application may be accepted if the reference identifying the prior-filed application by provisional application number was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application must be accompanied by:

(1) The reference required by 35 U.S.C. 119(e) and paragraph (a)(3) of this section to the prior-filed provisional application, unless previously submitted;

(2) The petition fee as set forth in § 1.17(m); and

(3) A statement that the entire delay between the date the benefit claim was due under paragraph (a)(4) of this section and the date the benefit claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(d) *Claims under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed nonprovisional application, international application, or international design application.* An applicant in a nonprovisional application (including a nonprovisional application resulting from an international application or international design application), an international application designating the United States, or an international design application designating the United States may claim the benefit of one or more prior-filed copending nonprovisional applications, international applications designating the United States, or international design applications designating the United States under the conditions set forth in 35 U.S.C. 120, 121, 365(c), or 386(c) and this section.

(1) Each prior-filed application must name the inventor or a joint inventor named in the later-filed application as the inventor or a joint inventor. In addition, each prior-filed application must either be:

(i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States;

(ii) An international design application entitled to a filing date in accordance with § 1.1023 and designating the United States; or

(iii) A nonprovisional application under 35 U.S.C. 111(a) that is entitled to a filing date as set forth in § 1.53(b) or (d) for which the basic filing fee set forth in § 1.16 has been paid within the pendency of the application.

(2) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application, international application designating the United States, or international design application designating the United States that claims the benefit of one or more prior-filed nonprovisional applications, international applications designating the United States, or international design applications designating the United States must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number), international application number and international filing date, or international registration number and filing date under § 1.1023. If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76(b)(5)). The reference also must identify the relationship of the applications, namely, whether the later-filed application is a continuation, divisional, or continuation-in-part of the prior-filed nonprovisional application, international application, or international design application.

(3)(i) The reference required by 35 U.S.C. 120 and paragraph (d)(2) of this section must be submitted during the pendency of the later-filed application.

(ii) If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application entering the national stage from an international application under 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) (§ 1.491(a)), four months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage, or sixteen months from the filing date of the prior-filed application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application for a design patent;

(B) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(C) An international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) Except as provided in paragraph (e) of this section, failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (d)(2) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) to the prior-filed application.

(4) The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior-filed application. The identification of an application by application number under this section is the identification of every application assigned that application number necessary for a specific reference required by 35 U.S.C. 120 to every such application assigned that application number.

(5) Cross-references to other related applications may be made when appropriate (see § 1.14), but cross-references to applications for which a benefit is not claimed under title 35, United States Code, must not be included in an application data sheet (§ 1.76(b)(5)).

(6) If a nonprovisional application filed on or after March 16, 2013, other than a nonprovisional international design application, claims the benefit of the filing date of a nonprovisional application or an international application designating the United States filed prior to March 16, 2013, and also contains, or contained at any time, a claim to a claimed invention that has an effective filing date as defined in § 1.109 that is on or after March 16, 2013, the applicant must provide a statement to that effect within the later of four months from the actual filing date of the later-filed application, four months from the date of entry into the national stage as set forth in § 1.491 in an international application, sixteen months from the filing date of the prior-filed application, or the date that a first claim to a claimed invention that has an effective filing date on or after March 16, 2013, is presented in the later-filed application. An applicant is not required to provide such a statement if either:

(i) The application claims the benefit of a nonprovisional application in which a statement under § 1.55(k), paragraph (a)(6) of this section, or this paragraph that the application contains, or contained at any time, a claim to a claimed invention that has an effective filing date on or after March 16, 2013 has been filed; or

(ii) The applicant reasonably believes on the basis of information already known to the individuals designated in § 1.56(c) that the later filed application does not, and did not at any time, contain a claim to a claimed invention

that has an effective filing date on or after March 16, 2013.

(7) Where benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) to an international application or an international design application which designates but did not originate in the United States, the Office may require a certified copy of such application together with an English translation thereof if filed in another language.

(e) *Delayed claims under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed nonprovisional application, international application, or international design application.* If the reference required by 35 U.S.C. 120 and paragraph (d)(2) of this section is presented after the time period provided by paragraph (d)(3) of this section, the claim under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed copending nonprovisional application, international application designating the United States, or international design application designating the United States may be accepted if the reference required by paragraph (d)(2) of this section was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed application must be accompanied by:

(1) The reference required by 35 U.S.C. 120 and paragraph (d)(2) of this section to the prior-filed application, unless previously submitted;

(2) The petition fee as set forth in § 1.17(m); and

(3) A statement that the entire delay between the date the benefit claim was due under paragraph (d)(3) of this section and the date the benefit claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(f) *Applications containing patentably indistinct claims.* Where two or more applications filed by the same applicant or assignee contain patentably indistinct claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

(g) *Applications or patents under reexamination naming different inventors and containing patentably indistinct claims.* If an application or a patent under reexamination and at least one other application naming different inventors are owned by the same person and contain patentably indistinct claims, and there is no statement of record indicating that the claimed inventions were commonly owned or subject to an obligation of assignment to the same person on the effective filing date (as defined in § 1.109), or on the date of the invention, as applicable, of the later claimed invention, the Office may require the applicant or assignee to state whether the claimed inventions were commonly owned or subject to an obligation of assignment to the same person on such date, and if not, indicate which named inventor is the prior inventor, as applicable. Even if the claimed inventions were commonly owned, or subject to an obligation of assignment to the same person on the effective filing date (as defined in § 1.109), or on the date of the invention, as applicable, of the later claimed invention, the patentably indistinct claims may be rejected under the doctrine of double patenting in view of such commonly owned or assigned applications or patents under reexamination.

(h) *Applications filed before September 16, 2012.* Notwithstanding the requirement in paragraphs (a)(3) and (d)(2) of this section that any specific reference to a prior-filed application be presented in an application data sheet (§ 1.76), this requirement in paragraph (a)(3) and (d)(2) of this section will be satisfied by the presentation of such specific reference in the first sentence(s) of the specification following the title in a nonprovisional application filed under 35 U.S.C. 111(a) before September 16, 2012, or resulting from an international application filed under 35 U.S.C. 363 before September 16, 2012. The provisions of this paragraph do not apply to any specific reference submitted for a petition under paragraph (b) of this section to restore the benefit of a provisional application.

(i) *Petitions required in international applications.* If a petition under paragraph (b), (c), or (e) of this section is required in an international application that was not filed with the United States Receiving Office and is not a nonprovisional application, then such petition may be filed in the earliest nonprovisional application that claims benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) to the international application and will be treated as having been filed in the international application.

(j) *Benefit under 35 U.S.C. 386(c).* Benefit under 35 U.S.C. 386(c) with respect to an international design application is applicable only to nonprovisional applications, international applications, and international design applications filed on or after May 13, 2015, and patents issuing thereon.

(k) *Time periods in this section.* The time periods set forth in this section are not extendable, but are subject to 35 U.S.C. 21(b) (and § 1.7(a)), PCT Rule 80.5, and Hague Agreement Rule 4(4).

■ 23. Section 1.84 is amended by revising paragraphs (a)(2) and (y) to read as follows:

§ 1.84 Standards for drawings.

(a) * * *

(2) *Color.* Color drawings are permitted in design applications. Where a design application contains color drawings, the application must include the number of sets of color drawings required by paragraph (a)(2)(ii) of this section and the specification must contain the reference required by paragraph (a)(2)(iii) of this section. On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility patent application. The color drawings must be of sufficient quality such that all details in the drawings are reproducible in black and white in the printed patent. Color drawings are not permitted in international applications (see PCT Rule 11.13). The Office will accept color drawings in utility patent applications only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:

(i) The fee set forth in § 1.17(h);

(ii) One (1) set of color drawings if submitted via the Office electronic filing system or three (3) sets of color drawings if not submitted via the Office electronic filing system; and

(iii) An amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

* * * * *

(y) *Types of drawings.* See § 1.152 for design drawings, § 1.1026 for international design reproductions, § 1.165 for plant drawings, and § 1.173(a)(2) for reissue drawings.

■ 24. Section 1.85 is amended by revising paragraph (c) to read as follows:

§ 1.85 Corrections to drawings.

* * * * *

(c) If a corrected drawing is required or if a drawing does not comply with § 1.84 or an amended drawing submitted under § 1.121(d) in a nonprovisional international design application does not comply with

§ 1.1026 at the time an application is allowed, the Office may notify the applicant in a notice of allowability and set a three-month period of time from the mail date of the notice of allowability within which the applicant must file a corrected drawing in compliance with § 1.84 or 1.1026, as applicable, to avoid abandonment. This time period is not extendable under § 1.136 (see § 1.136(c)).

■ 25. Section 1.97 is amended by revising paragraphs (b)(3) and (4) and adding paragraph (b)(5) to read as follows:

§ 1.97 Filing of information disclosure statement.

* * * * *

(b) * * *

(3) Before the mailing of a first Office action on the merits;

(4) Before the mailing of a first Office action after the filing of a request for continued examination under § 1.114; or

(5) Within three months of the date of publication of the international registration under Hague Agreement Article 10(3) in an international design application.

* * * * *

■ 26. Section 1.105 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

§ 1.105 Requirements for information.

(a)(1) In the course of examining or treating a matter in a pending or abandoned application, in a patent, or in a reexamination proceeding, including a reexamination proceeding ordered as a result of a supplemental examination proceeding, the examiner or other Office employee may require the submission, from individuals identified under § 1.56(c), or any assignee, of such information as may be reasonably necessary to properly examine or treat the matter, for example:

* * * * *

■ 27. Section 1.109 is revised to read as follows:

§ 1.109 Effective filing date of a claimed invention under the Leahy-Smith America Invents Act.

(a) The effective filing date for a claimed invention in a patent or application for patent, other than in a reissue application or reissued patent, is the earliest of:

(1) The actual filing date of the patent or the application for the patent containing a claim to the invention; or

(2) The filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority or the benefit of an earlier filing date under 35 U.S.C. 119, 120, 121, 365, or 386.

(b) The effective filing date for a claimed invention in a reissue application or a reissued patent is determined by deeming the claim to the invention to have been contained in the patent for which reissue was sought.

■ 28. Section 1.114 is amended by revising paragraphs (e)(3) through (5) and adding paragraph (e)(6) to read as follows:

§ 1.114 Request for continued examination.

* * * * *

(e) * * *

(3) An international application filed under 35 U.S.C. 363 before June 8, 1995, or an international application that does not comply with 35 U.S.C. 371;

(4) An application for a design patent;

(5) An international design application; or

(6) A patent under reexamination.

■ 29. Section 1.121 is amended by revising paragraph (d) introductory text to read as follows:

§ 1.121 Manner of making amendments in applications.

* * * * *

(d) *Drawings.* One or more application drawings shall be amended in the following manner: Any changes to an application drawing must be in compliance with § 1.84 or, for a nonprovisional international design application, in compliance with §§ 1.84(c) and 1.1026 and must be submitted on a replacement sheet of drawings which shall be an attachment to the amendment document and, in the top margin, labeled ''Replacement Sheet.'' Any replacement sheet of drawings shall include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is amended. Any new sheet of drawings containing an additional figure must be labeled in the top margin as ''New Sheet.'' All changes to the drawings shall be explained, in detail, in either the drawing amendment or remarks section of the amendment paper.

* * * * *

■ 30. Section 1.130 is amended by revising paragraph (d) to read as follows:

§ 1.130 Affidavit or declaration of attribution or prior public disclosure under the Leahy-Smith America Invents Act.

* * * * *

(d) *Applications and patents to which this section is applicable.* The provisions of this section apply to any application for patent, and to any patent issuing thereon, that contains, or contained at any time:

(1) A claim to a claimed invention that has an effective filing date as defined in § 1.109 that is on or after March 16, 2013; or

(2) A specific reference under 35 U.S.C. 120, 121, 365(c), or 386(c) to any patent or application that contains, or contained at any time, a claim to a claimed invention that has an effective filing date as defined in § 1.109 that is on or after March 16, 2013.

■ 31. Section 1.131 is amended by revising paragraph (d) to read as follows:

§ 1.131 Affidavit or declaration of prior invention or to disqualify commonly owned patent or published application as prior art.

* * * * *

(d) The provisions of this section apply to any application for patent and to any patent issuing thereon, that contains, or contained at any time:

(1) A claim to an invention that has an effective filing date as defined in § 1.109 that is before March 16, 2013; or

(2) A specific reference under 35 U.S.C. 120, 121, 365(c), or 386(c) to any patent or application that contains, or contained at any time, a claim to an invention that has an effective filing date as defined in § 1.109 that is before March 16, 2013.

* * * * *

■ 32. Section 1.137 is amended by revising paragraphs (d)(1)(ii) and (d)(2) to read as follows:

§ 1.137 Revival of abandoned application, or terminated or limited reexamination prosecution.

* * * * *

(d) * * *

(1) * * *

(ii) The period extending beyond twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, 365(c), or 386(c) from the date on which the earliest such application was filed.

(2) Any terminal disclaimer pursuant to paragraph (d)(1) of this section must also apply to any patent granted on a continuing utility or plant application filed before June 8, 1995, or a continuing design application, that contains a specific reference under 35 U.S.C. 120, 121, 365(c), or 386(c) to the application for which revival is sought.

* * * * *

■ 33. Section 1.155 is amended by revising paragraph (a)(1) to read as follows:

§ 1.155 Expedited examination of design applications.

(a) * * *

(1) The application must include drawings in compliance with § 1.84, or for an international design application that designates the United States, must have been published pursuant to Hague Agreement Article 10(3);

* * * * *

■ 34. Section 1.175 is amended by revising paragraph (f)(1) introductory text to read as follows:

§ 1.175 Inventor's oath or declaration for a reissue application.

* * * * *

(f)(1) The requirement for the inventor's oath or declaration for a continuing reissue application that claims the benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) in compliance with § 1.78 of an earlier-filed reissue application may be satisfied by a copy of the inventor's oath or declaration from the earlier-filed reissue application, provided that:

* * * * *

■ 35. Section 1.211 is amended by revising paragraph (b) to read as follows:

§ 1.211 Publication of applications.

* * * * *

(b) Provisional applications under 35 U.S.C. 111(b) shall not be published, and design applications under 35 U.S.C. chapter 16, international design applications under 35 U.S.C. chapter 38, and reissue applications under 35 U.S.C. chapter 25 shall not be published under this section.

* * * * *

■ 36. Subpart I to part 1 is added to read as follows:

Subpart I—International Design Application

General Information

Sec.

Who May File an International Design Application

The International Design Application

Fees

Representation

Transmittal of the International Design Application to the International Bureau

Relief From Prescribed Time Limits; Conversion to a Design Application Under 35 U.S.C. Chapter 16

National Processing of International Design Applications

Subpart I — International Design Application

General Information

§ 1.1001 Definitions related to international design applications.

(a) *Article* as used in this subpart means an article of the Hague Agreement;

(b) *Regulations* as used in this subpart, when capitalized, means the ''Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement'';

(c) *Rule* as used in this subpart, when capitalized, means one of the Regulations;

(d) *Administrative Instructions* as used in this subpart means the Administrative Instructions referred to in Rule 34;

(e) *1960 Act* as used in this subpart means the Act signed at the Hague on November 28, 1960, of the Hague Agreement;

(f) Other terms and expressions in subpart I not defined in this section are as defined in Article 1, Rule 1, and 35 U.S.C. 381.

§ 1.1002 The United States Patent and Trademark Office as an office of indirect filing.

(a) The United States Patent and Trademark Office, as an office of indirect filing, shall accept international design applications where the applicant's Contracting Party is the United States.

(b) The major functions of the United States Patent and Trademark Office as an office of indirect filing include:

(1) Receiving and according a receipt date to international design applications;

(2) Collecting and, when required, transmitting fees due for processing international design applications;

(3) Determining compliance with applicable requirements of part 5 of this chapter; and

(4) Transmitting an international design application to the International Bureau, unless prescriptions concerning national security prevent the application from being transmitted.

§ 1.1003 The United States Patent and Trademark Office as a designated office.

(a) The United States Patent and Trademark Office will act as a designated office (''United States Designated Office'') for international design applications in which the United States has been designated as a Contracting Party in which protection is sought.

(b) The major functions of the United States Designated Office include:

(1) Accepting for national examination international design applications which satisfy the requirements of the Hague Agreement, the Regulations, and the regulations;

(2) Performing an examination of the international design application in accordance with 35 U.S.C. chapter 16; and

(3) Communicating the results of examination to the International Bureau.

§ 1.1004 The International Bureau.

(a) The International Bureau is the World Intellectual Property Organization located at Geneva, Switzerland. It is the international intergovernmental organization which acts as the coordinating body under the Hague Agreement and the Regulations.

(b) The major functions of the International Bureau include:

(1) Receiving international design applications directly from applicants and indirectly from an office of indirect filing;

(2) Collecting required fees and crediting designation fees to the accounts of the Contracting Parties concerned;

(3) Reviewing international design applications for compliance with prescribed formal requirements;

(4) Translating international design applications into the required languages for recordation and publication;

(5) Registering international designs in the International Register where the international design application complies with the applicable requirements;

(6) Publishing international registrations in the International Designs Bulletin; and

(7) Sending copies of the publication of the international registration to each designated office.

§ 1.1005 Display of currently valid control number under the Paperwork Reduction Act.

(a) Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the collection of information in this subpart has been reviewed and approved by the Office of Management and Budget under control number 0651–0075.

(b) Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget control number. This section constitutes the display required by 44 U.S.C. 3512(a) and 5 CFR 1320.5(b)(2)(i) for the collection of information under Office of Management and Budget control number 0651–0075 (*see* 5 CFR 1320.5(b)(2)(ii)(D)).

Who May File an International Design Application

§ 1.1011 Applicant for international design application.

(a) Only persons who are nationals of the United States or who have a domicile, a habitual residence, or a real and effective industrial or commercial establishment in the territory of the United States may file international design applications through the United States Patent and Trademark Office.

(b) Although the United States Patent and Trademark Office will accept international design applications filed by any person referred to in paragraph (a) of this section, an international design application designating the United States may be refused by the Office as a designated office if the applicant is not a person qualified under 35 U.S.C. chapter 11 to be an applicant.

§ 1.1012 Applicant's Contracting Party.

In order to file an international design application through the United States Patent and Trademark Office as an office of indirect filing, the United States must be applicant's Contracting Party (Articles 4 and 1(xiv)).

The International Design Application

§ 1.1021 Contents of the international design application.

(a) *Mandatory contents.* The international design application shall be in English, French, or Spanish (Rule 6(1)) and shall contain or be accompanied by:

(1) A request for international registration under the Hague Agreement (Article 5(1)(i));

(2) The prescribed data concerning the applicant (Article 5(1)(ii) and Rule 7(3)(i) and (ii));

(3) The prescribed number of copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international design application, presented in the prescribed manner; however, where the industrial design is two-dimensional and a request for deferment of publication is made in accordance with Article 5(5), the international design application may, instead of containing reproductions, be accompanied by the prescribed number of specimens of the industrial design (Article 5(1)(iii));

(4) An indication of the product or products that constitute the industrial design or in relation to which the industrial design is to be used, as prescribed (Article 5(1)(iv) and Rule 7(3)(iv));

(5) An indication of the designated Contracting Parties (Article 5(1)(v));

(6) The prescribed fees (Article 5(1)(vi) and Rule 12(1));

(7) The Contracting Party or Parties in respect of which the applicant fulfills the conditions to be the holder of an international registration (Rule 7(3)(iii));

(8) The number of industrial designs included in the international design application, which may not exceed 100, and the number of reproductions or specimens of the industrial designs accompanying the international design application (Rule 7(3)(v));

(9) The amount of the fees being paid and the method of payment, or instructions to debit the required amount of fees to an account opened with the International Bureau, and the identification of the party effecting the payment or giving the instructions (Rule 7(3)(vii)); and

(10) An indication of applicant's Contracting Party as required under Rule 7(4)(a).

(b) *Additional mandatory contents required by certain Contracting Parties.* (1) Where the international design application contains the designation of a Contracting Party that requires, pursuant to Article 5(2), any of the following elements, then the international design application shall contain such required element(s):

(i) Indications concerning the identity of the creator of the industrial design that is the subject of that application (Rule 11(1));

(ii) A brief description of the reproduction or of the characteristic features of the industrial design that is the subject of that application (Rule 11(2));

(iii) A claim (Rule 11(3)).

(2) Where the international design application contains the designation of a Contracting Party that has made a declaration under Rule 8(1), then the international application shall contain the statement, document, oath or declaration specified in that declaration (Rule 7(4)(c)).

(c) *Optional contents.* The international design application may contain:

(1) Two or more industrial designs, subject to the prescribed conditions (Article 5(4) and Rule 7(7));

(2) A request for deferment of publication (Article 5(5) and Rule 7(5)(e)) or a request for immediate publication (Rule 17);

(3) An element referred to in item (i) or (ii) of Article 5(2)(b) of the Hague Agreement or in Article 8(4)(a) of the 1960 Act even where that element is not required in consequence of a notification in accordance with Article 5(2)(a) of the Hague Agreement or in consequence of a requirement under Article 8(4)(a) of the 1960 Act (Rule 7(5)(a));

(4) The name and address of applicant's representative, as prescribed (Rule 7(5)(b));

(5) A claim of priority of one or more earlier filed applications in accordance with Article 6 and Rule 7(5)(c);

(6) A declaration, for purposes of Article 11 of the Paris Convention, that the product or products which constitute the industrial design or in which the industrial design is incorporated have been shown at an official or officially recognized international exhibition, together with the place where the exhibition was held and the date on which the product or products were first exhibited there and,

where less than all the industrial designs contained in the international design application are concerned, the indication of those industrial designs to which the declaration relates or does not relate (Rule 7(5)(d));

(7) Any declaration, statement or other relevant indication as may be specified in the Administrative Instructions (Rule 7(5)(f));

(8) A statement that identifies information known by the applicant to be material to the eligibility for protection of the industrial design concerned (Rule 7(5)(g));

(9) A proposed translation of any text matter contained in the international design application for purposes of recording and publication (Rule 6(4)).

(d) *Required contents where the United States is designated.* In addition to the mandatory requirements set forth in paragraph (a) of this section, an international design application that designates the United States shall contain or be accompanied by:

(1) A claim (§§ 1.1021(b)(1)(iii) and 1.1025);

(2) Indications concerning the identity of the creator (*i.e.,* the inventor, see § 1.9(d)) in accordance with Rule 11(1); and

(3) The inventor's oath or declaration (§§ 1.63 and 1.64). The requirements in §§ 1.63(b) and 1.64(b)(4) to identify each inventor by his or her legal name, mailing address, and residence, if an inventor lives at a location which is different from the mailing address, and the requirement in § 1.64(b)(2) to identify the residence and mailing address of the person signing the substitute statement will be considered satisfied by the presentation of such information in the international design application prior to international registration.

§ 1.1022 Form and signature.

(a) The international design application shall be presented on the official form (Rules 7(1) and 1(vi)).

(b) The international design application shall be signed by the applicant.

§ 1.1023 Filing date of an international design application in the United States.

(a) Subject to paragraph (b) of this section, the filing date of an international design application in the United States is the date of international registration determined by the International Bureau under the Hague Agreement (35 U.S.C. 384 and 381(a)(5)).

(b) Where the applicant believes the international design application is entitled under the Hague Agreement to a filing date in the United States other than the date of international registration, the applicant may petition the Director under this paragraph to accord the international design application a filing date in the United States other than the date of international registration. Such petition must be accompanied by the fee set forth in § 1.17(f) and include a showing to the satisfaction of the Director that the international design application is entitled to such filing date.

§ 1.1024 The description.

An international design application designating the United States must include a specification as prescribed by 35 U.S.C. 112 and preferably include a brief description of the reproduction pursuant to Rule 7(5)(a) describing the view or views of the reproductions.

§ 1.1025 The claim.

The specific wording of the claim in an international design application designating the United States shall be in formal terms to the ornamental design for the article (specifying name of article) as shown, or as shown and described. More than one claim is neither required nor permitted for purposes of the United States.

§ 1.1026 Reproductions.

Reproductions shall comply with the requirements of Rule 9 and Part Four of the Administrative Instructions.

§ 1.1027 Specimens.

Where a request for deferment of publication has been filed in respect of a two-dimensional industrial design, the international design application may include specimens of the design in accordance with Rule 10 and Part Four of the Administrative Instructions. Specimens are not permitted in an international design application that designates the United States or any other Contracting Party which does not permit deferment of publication.

§ 1.1028 Deferment of publication.

The international design application may contain a request for deferment of publication, provided the application does not designate the United States or any other Contracting Party which does not permit deferment of publication.

Fees

§ 1.1031 International design application fees.

(a) International design applications filed through the Office as an office of indirect filing are subject to payment of a transmittal fee (35 U.S.C. 382(b) and Article 4(2)) in the amount of $120.

(b) The Schedule of Fees annexed to the Regulations (Rule 27(1)), a list of individual designation fee amounts, and a fee calculator may be viewed on the Web site of the World Intellectual Property Organization, currently available at *http://www.wipo.int/hague.*

(c) The following fees required by the International Bureau may be paid either directly to the International Bureau or through the Office as an office of indirect filing in the amounts specified on the World Intellectual Property Organization Web site described in paragraph (b) of this section:

(1) International application fees (Rule 12(1)); and

(2) Fee for descriptions exceeding 100 words (Rule 11(2)).

(d) The fees referred to in paragraph (c) of this section may be paid as follows:

(1) Directly to the International Bureau in Swiss currency (*see* Administrative Instruction 801); or

(2) Through the Office as an office of indirect filing, provided such fees are paid no later than the date of payment of the transmittal fee required under paragraph (a) of this section. Any payment through the Office must be in U.S. dollars. Applicants paying the fees in paragraph (c) of this section through the Office may be subject to a requirement by the International Bureau to pay additional amounts where the conversion from U.S. dollars to Swiss currency results in the International Bureau receiving less than the prescribed amounts.

(e) Payment of the fees referred to in Article 17 and Rule 24 for renewing an international registration (''renewal fees'') is not required to maintain a U.S. patent issuing on an international design application in force. Renewal fees, if required, must be submitted directly to the International Bureau. Any renewal fee submitted to the Office will not be transmitted to the International Bureau.

Representation

§ 1.1041 Representation in an international design application.

(a) The applicant may appoint a representative before the International Bureau in accordance with Rule 3.

(b) Applicants of international design applications may be represented before the Office as an office of indirect filing by a practitioner registered (§ 11.6) or granted limited recognition (§ 11.9(a) or (b)) to practice before the Office in patent matters. Such practitioner may act pursuant to § 1.34 or pursuant to appointment by the applicant. The appointment must be in writing signed

by the applicant, must give the practitioner power to act on behalf of the applicant, and must specify the name and registration number or limited recognition number of each practitioner. An appointment of a representative made in the international design application pursuant to Rule 3(2) that complies with the requirements of this paragraph will be effective as an appointment before the Office as an office of indirect filing.

§ 1.1042 Correspondence respecting international design applications filed with the Office as an office of indirect filing.

The applicant may specify a correspondence address for correspondence sent by the Office as an office of indirect filing. Where no such address has been specified, the Office will use as the correspondence address the address of applicant's appointed representative (§ 1.1041) or, where no representative is appointed, the address as specified in Administrative Instruction 302.

Transmittal of International Design Application to the International Bureau

§ 1.1045 Procedures for transmittal of international design application to the International Bureau.

(a) Subject to paragraph (b) of this section and payment of the transmittal fee set forth in § 1.1031(a), transmittal of the international design application to the International Bureau shall be made by the Office as provided by Rule 13(1). At the same time as it transmits the international design application to the International Bureau, the Office shall notify the International Bureau of the date on which it received the application. The Office shall also notify the applicant of the date on which it received the application and of the transmittal of the international design application to the International Bureau.

(b) No copy of an international design application may be transmitted to the International Bureau, a foreign designated office, or other foreign authority by the Office or the applicant, unless the applicable requirements of part 5 of this chapter have been satisfied.

(c) Once transmittal of the international design application has been effected under paragraph (a) of this section, except for matters properly before the United States Patent and Trademark Office as an office of indirect filing or as a designated office, all further correspondence concerning the application should be sent directly to the International Bureau. The United States Patent and Trademark Office will generally not forward communications to the International Bureau received after transmittal of the application to the International Bureau. Any reply to an invitation sent to the applicant by the International Bureau must be filed directly with the International Bureau, and not with the Office, to avoid abandonment or other loss of rights under Article 8.

Relief From Prescribed Time Limits; Conversion to a Design Application Under 35 U.S.C. Chapter 16

§ 1.1051 Relief from prescribed time limits.

(a) If the delay in an applicant's failure to act within prescribed time limits under the Hague Agreement in connection with requirements pertaining to an international design application was unintentional, a petition may be filed pursuant to this section to excuse the failure to act as to the United States. A grantable petition pursuant to this section must be accompanied by:

(1) A copy of any invitation sent from the International Bureau setting a prescribed time limit for which applicant failed to timely act;

(2) The reply required under paragraph (c) of this section, unless previously filed;

(3) The fee as set forth in § 1.17(m);

(4) A certified copy of the originally filed international design application, unless a copy of the international design application was previously communicated to the Office from the International Bureau or the international design application was filed with the Office as an office of indirect filing, and a translation thereof into the English language if it was filed in another language;

(5) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(6) A terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

(b) Any request for reconsideration or review of a decision refusing to excuse the applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to excuse or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under the provisions of § 1.136.

(c) *Reply.* The reply required may be:

(1) The filing of a continuing application. If the international design application has not been subject to international registration, the reply must also include a grantable petition under § 1.1023(b) to accord the international design application a filing date; or

(2) A grantable petition under § 1.1052, where the international design application was filed with the Office as an office of indirect filing.

(d) *Terminal disclaimer.* Any petition pursuant to this section must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period beginning on the due date for the reply for which applicant failed to timely act and ending on the date of filing of the reply required under paragraph (c) of this section and must also apply to any patent granted on a continuing design application that contains a specific reference under 35 U.S.C. 120, 121, 365(c) or 386(c) to the application for which relief under this section is sought.

§ 1.1052 Conversion to a design application under 35 U.S.C. chapter 16.

(a) An international design application designating the United States filed with the Office as an office of indirect filing and meeting the requirements under § 1.53(b) for a filing date for an application for a design patent may, on petition under this section, be converted to an application for a design patent under § 1.53(b) and accorded a filing date as provided therein. A petition under this section must be accompanied by the fee set forth in § 1.17(t) and be filed prior to publication of the international registration under Article 10(3). The conversion of an international design application to an application for a design patent under § 1.53(b) will not entitle applicant to a refund of the transmittal fee or any fee forwarded to the International Bureau, or the application of any such fee toward the filing fee, or any other fee, for the application for a design patent under § 1.53(b). The application for a design patent resulting from conversion of an international design application must also include the basic filing fee (§ 1.16(b)), the search fee (§ 1.16(l)), the examination fee (§ 1.16(p)), the inventor's oath or declaration (§ 1.63 or 1.64), and a surcharge if required by § 1.16(f).

(b) An international design application will be converted to an

application for a design patent under § 1.53(b) if a decision on petition under this section is granted prior to transmittal of the international design application to the International Bureau pursuant to § 1.1045. Otherwise, a decision granting a petition under this section will be effective to convert the international design application to an application for a design patent under § 1.53(b) only for purposes of the designation of the United States.

(c) A petition under this section will not be granted in an abandoned international design application absent a grantable petition under § 1.1051.

(d) An international design application converted under this section is subject to the regulations applicable to a design application filed under 35 U.S.C. chapter 16.

National Processing of International Design Applications

§ 1.1061 Rules applicable.

(a) The rules relating to applications for patents for other inventions or discoveries are also applicable to international design applications designating the United States, except as otherwise provided in this chapter or required by the Articles or Regulations.

(b) The provisions of § 1.74, § 1.84, except for § 1.84(c), and §§ 1.152 through 1.154 shall not apply to international design applications.

§ 1.1062 Examination.

(a) *Examination.* The Office shall make an examination pursuant to title 35, United States Code, of an international design application designating the United States.

(b) *Timing.* For each international design application to be examined under paragraph (a) of this section, the Office shall, subject to Rule 18(1)(c)(ii), send to the International Bureau within 12 months from the publication of the international registration under Rule 26(3) a notification of refusal (§ 1.1063) where it appears that the applicant is not entitled to a patent under the law with respect to any industrial design that is the subject of the international registration.

§ 1.1063 Notification of refusal.

(a) A notification of refusal shall contain or indicate:

(1) The number of the international registration;

(2) The grounds on which the refusal is based;

(3) A copy of a reproduction of the earlier industrial design and information concerning the earlier industrial design, where the grounds of refusal refer to similarity with an industrial design that is the subject of an earlier application or registration;

(4) Where the refusal does not relate to all the industrial designs that are the subject of the international registration, those to which it relates or does not relate; and

(5) A time period for reply under §§ 1.134 and 1.136, where a reply to the notification of refusal is required.

(b) Any reply to the notification of refusal must be filed directly with the Office and not through the International Bureau. The requirements of § 1.111 shall apply to a reply to a notification of refusal.

§ 1.1064 One independent and distinct design.

(a) Only one independent and distinct design may be claimed in a nonprovisional international design application.

(b) If the requirements under paragraph (a) of this section are not satisfied, the examiner shall in the notification of refusal or other Office action require the applicant in the reply to that action to elect one independent and distinct design for which prosecution on the merits shall be restricted. Such requirement will normally be made before any action on the merits but may be made at any time before the final action. Review of any such requirement is provided under §§ 1.143 and 1.144.

§ 1.1065 Corrections and other changes in the International Register.

(a) The effects of any correction in the International Register by the International Bureau pursuant to Rule 22 in a pending nonprovisional international design application shall be decided by the Office in accordance with the merits of each situation, subject to such other requirements as may be imposed. A patent issuing from an international design application may only be corrected in accordance with the provisions of title 35, United States Code, for correcting patents. Any correction under Rule 22 recorded by the International Bureau with respect to an abandoned nonprovisional international design application will generally not be acted upon by the Office and shall not be given effect unless otherwise indicated by the Office.

(b) A recording of a partial change in ownership in the International Register pursuant to Rule 21(7) concerning a transfer of less than all designs shall not have effect in the United States.

§ 1.1066 Correspondence address for a nonprovisional international design application.

(a) Unless the correspondence address is changed in accordance with § 1.33(a), the Office will use as the correspondence address in a nonprovisional international design application the address according to the following order:

(1) The correspondence address under § 1.1042;

(2) The address of applicant's representative identified in the publication of the international registration; and

(3) The address of the applicant identified in the publication of the international registration.

(b) Reference in the rules to the correspondence address set forth in § 1.33(a) shall be construed to include a reference to this section for a nonprovisional international design application.

§ 1.1067 Title, description, and inventor's oath or declaration.

(a) The title of the design must designate the particular article. Where a nonprovisional international design application does not contain a title of the design, the Office may establish a title. No description, other than a reference to the drawing, is ordinarily required in a nonprovisional international design application.

(b) An international design application designating the United States must include the inventor's oath or declaration. *See* § 1.1021(d). If the applicant is notified in a notice of allowability that an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each named inventor has not been filed, the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee is paid to avoid abandonment. This time period is not extendable under § 1.136 (*see* § 1.136(c)).

§ 1.1068 Statement of grant of protection.

Upon issuance of a patent on an international design application designating the United States, the Office may send to the International Bureau a statement to the effect that protection is granted in the United States to those industrial design or designs that are the subject of the international registration and covered by the patent.

§ 1.1070 Notification of Invalidation.

(a) Where a design patent that was granted from an international design

application is invalidated in the United States, and the invalidation is no longer subject to any review or appeal, the patentee shall inform the Office.

(b) After receiving a notification of invalidation under paragraph (a) of this section or through other means, the Office will notify the International Bureau in accordance with Hague Rule 20.

§ 1.1071 Grant of protection for an industrial design only upon issuance of a patent.

A grant of protection for an industrial design that is the subject of an international registration shall only arise in the United States through the issuance of a patent pursuant to 35 U.S.C. 389(d) or 171, and in accordance with 35 U.S.C. 153.

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

■ 37. The authority citation for part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

■ 38. Section 3.1 is amended by revising the definition of ''Application'' to read as follows:

§ 3.1 Definitions.

* * * * *

Application means a national application for patent, an international patent application that designates the United States of America, an international design application that designates the United States of America, or an application to register a trademark under section 1 or 44 of the Trademark Act, 15 U.S.C. 1051, or 15 U.S.C. 1126, unless otherwise indicated.

* * * * *

■ 39. Section 3.21 is revised to read as follows:

§ 3.21 Identification of patents and patent applications.

An assignment relating to a patent must identify the patent by the patent number. An assignment relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number; *e.g.,* 07/123,456). An assignment relating to an international patent application which designates the United States of America must identify the international application by the international application number; *e.g.,* PCT/US2012/012345. An assignment relating to an international design application which designates the United States of America must identify the international design application by the international registration number or by the U.S. application number assigned to the international design application. If an assignment of a patent application filed under § 1.53(b) of this chapter is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by the name of each inventor and the title of the invention so that there can be no mistake as to the patent application intended. If an assignment of a provisional application under § 1.53(c) of this chapter is executed before the provisional application is filed, it must identify the provisional application by the name of each inventor and the title of the invention so that there can be no mistake as to the provisional application intended.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

■ 40. The authority citation for 37 CFR part 5 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.;* the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.;* the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.;* and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7), as well as the Export Administration Act of 1979, 50 U.S.C. app. 2401 *et seq.;* the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 1322, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 41. Section 5.1 is amended by revising paragraph (b) to read as follows:

§ 5.1 Applications and correspondence involving national security.

* * * * *

(b) *Definitions.* (1) Application as used in this part includes provisional applications (§ 1.9(a)(2) of this chapter), nonprovisional applications (§ 1.9(a)(3)), international applications (§ 1.9(b)), or international design applications (§ 1.9(n)).

(2) Foreign application as used in this part includes, for filing in a foreign country, foreign patent office, foreign patent agency, or international agency (other than the United States Patent and Trademark Office acting as a Receiving Office for international applications (35 U.S.C. 361, § 1.412) or as an office of indirect filing for international design applications (35 U.S.C. 382, § 1.1002)) any of the following: An application for patent, international application, international design application, or application for the registration of a utility model, industrial design, or model.

* * * * *

■ 42. Section 5.3 is amended by revising paragraph (d) to read as follows:

§ 5.3 Prosecution of application under secrecy orders; withholding patent.

* * * * *

(d) International applications and international design applications under secrecy order will not be mailed, delivered, or otherwise transmitted to the international authorities or the applicant. International applications under secrecy order will be processed up to the point where, if it were not for the secrecy order, record and search copies would be transmitted to the international authorities or the applicant.

* * * * *

■ 43. Section 5.11 is amended by revising the section heading and paragraphs (a) through (c), (e)(3)(i), and (f) to read as follows:

§ 5.11 License for filing in, or exporting to, a foreign country an application on an invention made in the United States or technical data relating thereto.

(a) A license from the Commissioner for Patents under 35 U.S.C. 184 is required before filing any application for patent including any modifications, amendments, or supplements thereto or divisions thereof or for the registration of a utility model, industrial design, or model, in a foreign country, foreign patent office, foreign patent agency, or any international agency (other than the United States Patent and Trademark Office acting as a Receiving Office for international applications (35 U.S.C. 361, § 1.412) or as an office of indirect filing for international design applications (35 U.S.C. 382, § 1.1002)), if the invention was made in the United States, and:

(1) An application on the invention has been filed in the United States less than six months prior to the date on which the application is to be filed; or

(2) No application on the invention has been filed in the United States.

(b) The license from the Commissioner for Patents referred to in paragraph (a) of this section would also authorize the export of technical data abroad for purposes relating to the preparation, filing or possible filing and prosecution of a foreign application without separately complying with the

regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730 through 774 (Export Administration Regulations of the Bureau of Industry and Security, Department of Commerce), and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy).

(c) Where technical data in the form of a patent application, or in any form, are being exported for purposes related to the preparation, filing or possible filing and prosecution of a foreign application, without the license from the Commissioner for Patents referred to in paragraphs (a) or (b) of this section, or on an invention not made in the United States, the export regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730 through 774 (Export Administration Regulations of the Bureau of Industry and Security, Department of Commerce), and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy) must be complied with unless a license is not required because a United States application was on file at the time of export for at least six months without a secrecy order under § 5.2 being placed thereon. The term ''exported'' means export as it is defined in 22 CFR part 120, 15 CFR part 734, and activities covered by 10 CFR part 810.

* * * * *

(e) * * *

(3) * * *

(i) A license is not, or was not, required under paragraph (e)(2) of this section for the foreign application;

* * * * *

(f) A license pursuant to paragraph (a) of this section can be revoked at any time upon written notification by the United States Patent and Trademark Office. An authorization to file a foreign application resulting from the passage of six months from the date of filing of a United States patent application may be revoked by the imposition of a secrecy order.

■ 44. Section 5.12 is amended by revising paragraph (a) to read as follows:

§ 5.12 Petition for license.

(a) Filing of an application on an invention made in the United States will be considered to include a petition for license under 35 U.S.C. 184 for the subject matter of the application. The filing receipt or other official notice will indicate if a license is granted. If the initial automatic petition is not granted, a subsequent petition may be filed under paragraph (b) of this section.

* * * * *

■ 45. Section 5.13 is revised to read as follows:

§ 5.13 Petition for license; no corresponding application.

If no corresponding national, international design, or international application has been filed in the United States, the petition for license under § 5.12(b) must also be accompanied by a legible copy of the material upon which a license is desired. This copy will be retained as a measure of the license granted.

■ 46. Section 5.14 is amended by revising paragraph (c) to read as follows:

§ 5.14 Petition for license; corresponding U.S. application.

* * * * *

(c) Where the application to be filed or exported abroad contains matter not disclosed in the United States application or applications, including the case where the combining of two or more United States applications introduces subject matter not disclosed in any of them, a copy of the application as it is to be filed or exported abroad, must be furnished with the petition. If, however, all new matter in the application to be filed or exported is readily identifiable, the new matter may be submitted in detail and the remainder by reference to the pertinent United States application or applications.

* * * * *

■ 47. Section 5.15 is amended by revising paragraphs (a) introductory text, (a)(3), (b), (d), and (e) to read as follows:

§ 5.15 Scope of license.

(a) Applications or other materials reviewed pursuant to §§ 5.12 through 5.14, which were not required to be made available for inspection by defense agencies under 35 U.S.C. 181, will be eligible for a license of the scope provided in this paragraph. This license permits subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign application, if such changes to the application do not alter the general nature of the invention in a manner that would require the United States application to have been made available for inspection under 35 U.S.C. 181. Grant of this license authorizes the export and filing of an application in a foreign country or to any foreign patent agency or international patent agency when the subject matter of the foreign application corresponds to that of the domestic application. This license includes authority:

* * * * *

(3) To take any action in the prosecution of the foreign application provided that the adding of subject matter or taking of any action under paragraph (a)(1) or (2) of this section does not change the general nature of the invention disclosed in the application in a manner that would require such application to have been made available for inspection under 35 U.S.C. 181 by including technical data pertaining to:

(i) Defense services or articles designated in the United States Munitions List applicable at the time of foreign filing, the unlicensed exportation of which is prohibited pursuant to the Arms Export Control Act, as amended, and 22 CFR parts 120 through 130; or

(ii) Restricted Data, sensitive nuclear technology or technology useful in the production or utilization of special nuclear material or atomic energy, dissemination of which is subject to restrictions of the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as implemented by the regulations for Assistance to Foreign Atomic Energy Activities, 10 CFR part 810, in effect at the time of foreign filing.

(b) Applications or other materials which were required to be made available for inspection under 35 U.S.C. 181 will be eligible for a license of the scope provided in this paragraph. Grant of this license authorizes the export and filing of an application in a foreign country or to any foreign patent agency or international patent agency. Further, this license includes authority to export and file all duplicate and formal papers in foreign countries or with foreign and international patent agencies and to make amendments, modifications, and supplements to, file divisions of, and take any action in the prosecution of the foreign application, provided subject matter additional to that covered by the license is not involved.

* * * * *

(d) In those cases in which no license is required to file or export the foreign application, no license is required to file papers in connection with the prosecution of the foreign application not involving the disclosure of additional subject matter.

(e) Any paper filed abroad or transmitted to an international patent agency following the filing of a foreign application that changes the general nature of the subject matter disclosed at

the time of filing in a manner that would require such application to have been made available for inspection under 35 U.S.C. 181 or that involves the disclosure of subject matter listed in paragraph (a)(3)(i) or (ii) of this section must be separately licensed in the same manner as a foreign application. Further, if no license has been granted under § 5.12(a) on filing the corresponding United States application, any paper filed abroad or with an international patent agency that involves the disclosure of additional subject matter must be licensed in the same manner as a foreign application.

* * * * *

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

■ 48. The authority citation for 37 CFR part 11 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41.

■ 49. Section 11.10 is amended by revising paragraph (b)(3)(iii) to read as follows:

§ 11.10 Restrictions on practice in patent matters.

* * * * *

(b) * * *

(3) * * *

(iii) Particular patent or patent application means any patent or patent application, including, but not limited to, a provisional, substitute, international, international design, continuation, divisional, continuation-in-part, or reissue patent application, as well as any protest, reexamination, petition, appeal, interference, or trial proceeding based on the patent or patent application.

* * * * *

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 50. The authority citation for part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Pub. L. 112–29.

■ 51. Section 41.200 is revised by adding paragraph (b) to read as follows:

§ 41.200 Procedure; pendency.

* * * * *

(b) Any reference to 35 U.S.C. 102 or 135 in this subpart refers to the statute in effect on March 15, 2013, unless otherwise expressly indicated. Any reference to 35 U.S.C. 141 or 146 in this subpart refers to the statute applicable to the involved application or patent.

* * * * *

■ 52. Section 41.201 is amended by revising the definition of ''Constructive reduction to practice'' and paragraph (2)(ii) of the definition for ''Threshold issue'' to read as follows:

§ 41.201 Definitions.

* * * * *

Constructive reduction to practice means a described and enabled anticipation under 35 U.S.C. 102(g)(1), in a patent application of the subject matter of a count. Earliest constructive reduction to practice means the first constructive reduction to practice that has been continuously disclosed through a chain of patent applications including in the involved application or patent. For the chain to be continuous, each subsequent application must comply with the requirements of 35 U.S.C. 119–121, 365, or 386.

* * * * *

Threshold issue means an issue that, if resolved in favor of the movant, would deprive the opponent of standing in the interference. Threshold issues may include:

* * * * *

(2) * * *

(ii) Unpatentability for lack of written description under 35 U.S.C. 112 of an involved application claim where the applicant suggested, or could have suggested, an interference under § 41.202(a).

Dated: March 16, 2015.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2015–06397 Filed 4–1–15; 8:45 am]

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Northern Long-Eared Bat With 4(d) Rule; Final Rule and Interim Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2011–0024; 4500030113]

RIN 1018–AY98

Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Northern Long-Eared Bat With 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule, and interim rule with request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the northern long-eared bat (*Myotis septentrionalis*), a bat species that occurs in 37 States, the District of Columbia, and 13 Canadian Provinces. The effect of this final rule will be to add the northern long-eared bat to the List of Endangered and Threatened Wildlife.

We are also establishing an interim rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of the northern long-eared bat. We are seeking public comments on this interim rule, and we will publish either an affirmation of the interim rule or a final rule amending the interim rule after we consider all comments we receive. If you previously submitted comments or information on the proposed 4(d) rule we published on January 16, 2015, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in our final determination on the 4(d) rule.

DATES: *Effective dates:* The final rule amending 50 CFR 17.11 and the interim rule amending 50 CFR 17.40 are both effective May 4, 2015.

Comments on the interim rule amending 50 CFR 17.40: We will accept comments on the interim rule amending 50 CFR 17.40 received or postmarked on or before July 1, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* The final listing rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2011–0024 and at *http://www.fws.gov/midwest/Endangered.* Comments and materials we received, as well as supporting documentation we used in preparing the final listing rule, are available for public inspection at *http://www.regulations.gov,* and by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Twin Cities Ecological Services Office, 4101 American Blvd. East, Bloomington, MN 55425; telephone (612) 725–3548, ext. 2201; or facsimile (612) 725–3609.

Comments on the interim rule amending 50 CFR 17.40: You may submit comments on the interim rule amending 50 CFR 17.40 by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R5–ES–2011–0024, which is the docket number for this rulemaking. Then click on the Search button. Please ensure that you have located the correct document before submitting your comments. You may submit a comment by clicking on ''Comment Now!''

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2011–0024; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by one of the methods described above. 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 Comments Solicited on the Interim 4(d) Rule section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Lisa Mandell, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Twin Cities Ecological Services Field Office, 4101 American Blvd. East, Bloomington, MN 55425; telephone (612) 725–3548, ext. 2201; or facsimile (612) 725–3609. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Final Listing Rule

Why we need to publish a rule: Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. This rule will finalize the listing of the northern long-eared bat (*Myotis septentrionalis*) as a threatened species.

The basis for our action: Under the Endangered Species Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that white-nose syndrome is the predominant threat to the species.

Peer review and public comment: We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information we received during the comment periods.

Interim 4(d) Rule

The need for the regulatory action and how the action will meet that need: Consistent with section 4(d) of the Act, this interim 4(d) rule provides measures that are tailored to our current understanding of the conservation needs of the northern long-eared bat.

Statement of legal authority for the regulatory action: Under section 4(d) of the Act, the Secretary of the Interior has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to prohibit by regulation with respect to a threatened species, any act prohibited by section 9(a)(1) of the Act.

Summary of the major provisions of the regulatory action: The interim species-specific 4(d) rule prohibits purposeful take of northern long-eared bats throughout the species' range, except in instances of removal of northern long-eared bats from human structures and authorized capture and handling of northern long-eared bat by individuals permitted to conduct these same activities for other bats (for a period of 1 year after the effective date of the interim 4(d) rule).

In areas not yet affected by white nose syndrome (WNS), a disease currently affecting many U.S. bat populations, all incidental take resulting from any otherwise lawful activity will be excepted from prohibition.

In areas currently known to be affected by WNS, all incidental take prohibitions apply, except that take

attributable to forest management practices, maintenance and limited expansion of transportation and utility rights-of-way, prairie habitat management, and limited tree removal projects shall be excepted from the take prohibition, provided these activities protect known maternity roosts and hibernacula. Further, removal of hazardous trees for the protection of human life or property shall be excepted from the take prohibition.

Previous Federal Action

Please refer to the proposed listing rule for the northern long-eared bat (78 FR 61046; October 2, 2013) for a detailed description of previous Federal actions concerning this species. On October 2, 2013, we published in the **Federal Register** (78 FR 61046) a proposed rule to list the northern long-eared bat as an endangered species under the Act. The proposed rule had a 60-day comment period, ending on December 2, 2013. On December 2, 2013, we extended this comment period through January 2, 2014 (78 FR 72058). On June 30, 2014, we announced a 6-month extension of the final determination on the proposed listing rule for northern long-eared bat, and we reopened the public comment period on the proposed rule for 60 days, ending August 29, 2014 (79 FR 36698). On November 18, 2014, we again reopened the comment period on the proposed listing for an additional 30 days, ending December 18, 2014 (79 FR 68657). During the comment period we received one request for a public hearing, which was held in Sundance, Wyoming, on December 2, 2014. On January 16, 2015, we published a proposed rule to create a species-specific rule under section 4(d) of the Act (a ''4(d) rule'') that would provide measures that are necessary and advisable to provide for the conservation of the northern long-eared bat, if it were to be listed as a threatened species (80 FR 2371). At that time, we also reopened the public comment period on the October 2, 2013, proposed listing rule; we accepted public comments on both proposals for 60 days, ending March 17, 2015.

Background

Taxonomy and Species Description

The northern long-eared bat belongs to the order *Chiroptera,* suborder *Microchiroptera,* family *Vespertilionidae,* subfamily *Vespertilioninae,* genus *Myotis,* and subgenus *Myotis* (Caceres and Barclay 2000, p. 1). The northern long-eared bat was considered a subspecies of Keen's long-eared myotis (*Myotis keenii*) (Fitch and Schump 1979, p. 1), but was recognized as a distinct species by van Zyll de Jong in 1979 (1979, p. 993), based on geographic separation and difference in morphology (as cited in Caceres and Pybus 1997 p. 1; Caceres and Barclay 2000, p. 1; Nagorsen and Brigham 1993, p. 87; Whitaker and Hamilton 1998, p. 99; Whitaker and Mumford 2009, p. 207; Simmons 2005, p. 516). The northern long-eared bat is currently considered a monotypic species, with no subspecies described for this species (Caceres and Barclay 2000, p. 1; Nagorsen and Brigham 1993, p. 90; Whitaker and Mumford 2009, p. 214; van Zyll de Jong 1985, p. 94). Reynolds (2013, pers. comm.) stated that there have been very few genetic studies on this species; however, data collected in Ohio suggest relatively low levels of genetic differentiation across that State (Arnold 2007, p. 157). In addition, Johnson *et al.* (2014, upaginated) assessed nuclear genetic diversity at one site in New York and several sites in West Virginia, and found little evidence of population structure in northern long-eared bats at any scale. This species has been recognized by different common names, such as: Keen's bat (Whitaker and Hamilton 1998, p. 99), northern myotis (Nagorsen and Brigham 1993, p. 87; Whitaker and Mumford 2009, p. 207), and the northern bat (Foster and Kurta 1999, p. 660). For the purposes of this finding, we refer to this species as the northern long-eared bat, and recognize it as a listable entity under the Act.

A medium-sized bat species, the northern long-eared bat's adult body weight averages 5 to 8 grams (g) (0.2 to 0.3 ounces), with females tending to be slightly larger than males (Caceres and Pybus 1997, p. 3). Average body length ranges from 77 to 95 millimeters (mm) (3.0 to 3.7 inches (in)), tail length between 35 and 42 mm (1.3 to 1.6 in), forearm length between 34 and 38 mm (1.3 to 1.5 in), and wingspread between 228 and 258 mm (8.9 to 10.2 in) (Caceres and Barclay 2000, p. 1; Barbour and Davis 1969, p. 76). Pelage (fur) colors include medium to dark brown on its back; dark brown, but not black, ears and wing membranes; and tawny to pale-brown fur on the ventral side (Nagorsen and Brigham 1993, p. 87; Whitaker and Mumford 2009, p. 207). As indicated by its common name, the northern long-eared bat is distinguished from other *Myotis* species by its relatively long ears (average 17 mm (0.7 in); Whitaker and Mumford 2009, p. 207) that, when laid forward, extend beyond the nose up to 5 mm (0.2 in; Caceres and Barclay 2000, p. 1). The tragus (projection of skin in front of the external ear) is long (average 9 mm (0.4 in); Whitaker and Mumford 2009, p. 207), pointed, and symmetrical (Nagorsen and Brigham 1993, p. 87; Whitaker and Mumford 2009, p. 207). There is an occasional tendency for the northern long-eared bat to exhibit a slight keel on the calcar (spur of cartilage arising from inner side of ankle; Nagorsen and Brigham 1993, p. 87). This can add some uncertainty in distinguishing northern long-eared bats from other sympatric *Myotis* species (Lacki 2013, pers. comm.). Within its range, the northern long-eared bat can be confused with the little brown bat (*Myotis lucifugus*) or the western long-eared myotis (*Myotis evotis*). The northern long-eared bat can be distinguished from the little brown bat by its longer ears, tapered and symmetrical tragus, slightly longer tail, and less glossy pelage (Caceres and Barclay 2000, p. 1; Kurta 2013, pers. comm.). The northern long-eared bat can be distinguished from the western long-eared myotis by its darker pelage and paler membranes (Caceres and Barclay 2000, p. 1).

Distribution and Relative Abundance

The northern long-eared bat ranges across much of the eastern and north-central United States, and all Canadian provinces west to the southern Yukon Territory and eastern British Columbia (Nagorsen and Brigham 1993, p. 89; Caceres and Pybus 1997, p. 1; Environment Yukon 2011, p. 10) (see Figure 1, below). In the United States, the species' range reaches from Maine west to Montana, south to eastern Kansas, eastern Oklahoma, Arkansas, and east to South Carolina (Whitaker and Hamilton 1998, p. 99; Caceres and Barclay 2000, p. 2; Simmons 2005, p. 516; Amelon and Burhans 2006, pp. 71–72). The species' range includes all or portions of the following 37 States and the District of Columbia: Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

The October 2, 2013, proposed listing rule included Florida within the range of the northern long-eared bat; however, since that time we have learned that the species was known from only a single historical winter (1954) record in

Jackson County, Florida, and all other historical and recent surveys at this cave and 12 other caves (all in Jackson County) since this record was observed have not found the northern long-eared bat. Further, there are no known summer records for the State (Florida Fish and Wildlife Conservation Commission 2013, in litt.). Historically, the species has been most frequently observed in the northeastern United States and in the Canadian Provinces of Quebec and Ontario, with sightings increasing during swarming and hibernation periods (Caceres and Barclay 2000, p. 2). Much of the available data on northern long-eared bats are from winter surveys, although they are typically observed in low numbers because of their preference for inconspicuous roosts (Caceres and Pybus 1997, p. 2) (for more information on use of hibernacula, see *Biology,* below). More than 1,100 northern long-eared bat hibernacula have been identified throughout the species' range in the United States, although many hibernacula contain only a few (1 to 3) individuals (Whitaker and Hamilton 1998, p. 100). Known hibernacula (sites with one or more winter records of northern long-eared bats) include: Alabama (2), Arkansas (41), Connecticut (8), Delaware (2), Georgia (3), Illinois (21), Indiana (25), Kentucky (119), Maine (3), Maryland (8), Massachusetts (7), Michigan (103), Minnesota (11), Missouri (more than 269), Nebraska (2), New Hampshire (11), New Jersey (7), New York (90), North Carolina (22), Oklahoma (9), Ohio (7), Pennsylvania (112), South Carolina, (2), South Dakota (21), Tennessee (58), Vermont (16), Virginia (8), West Virginia (104), and Wisconsin (67). Northern long-eared bats are documented in hibernacula in 29 of the 37 States in the species' range. Other States within the species' range have no known hibernacula (due to no suitable hibernacula present, lack of survey effort, or existence of unknown retreats).

For purposes of organization, the U.S. portion of the northern long-eared bat's range is discussed below in four parts: eastern range, midwest range, southern range, and western range. In these sections, we have identified the species' historical status, in addition to its current status within each State. For those States where white-nose syndrome (WNS) has been detected (see Table 1), we have assessed the impact the disease has had on the northern long-eared bat's distribution and relative abundance to date. For a discussion on anticipated spread of WNS to currently unaffected States, see ''White-nose Syndrome'' and ''Effects of White-nose Syndrome on the Northern Long-eared Bat'' under the *Factor C* discussion.

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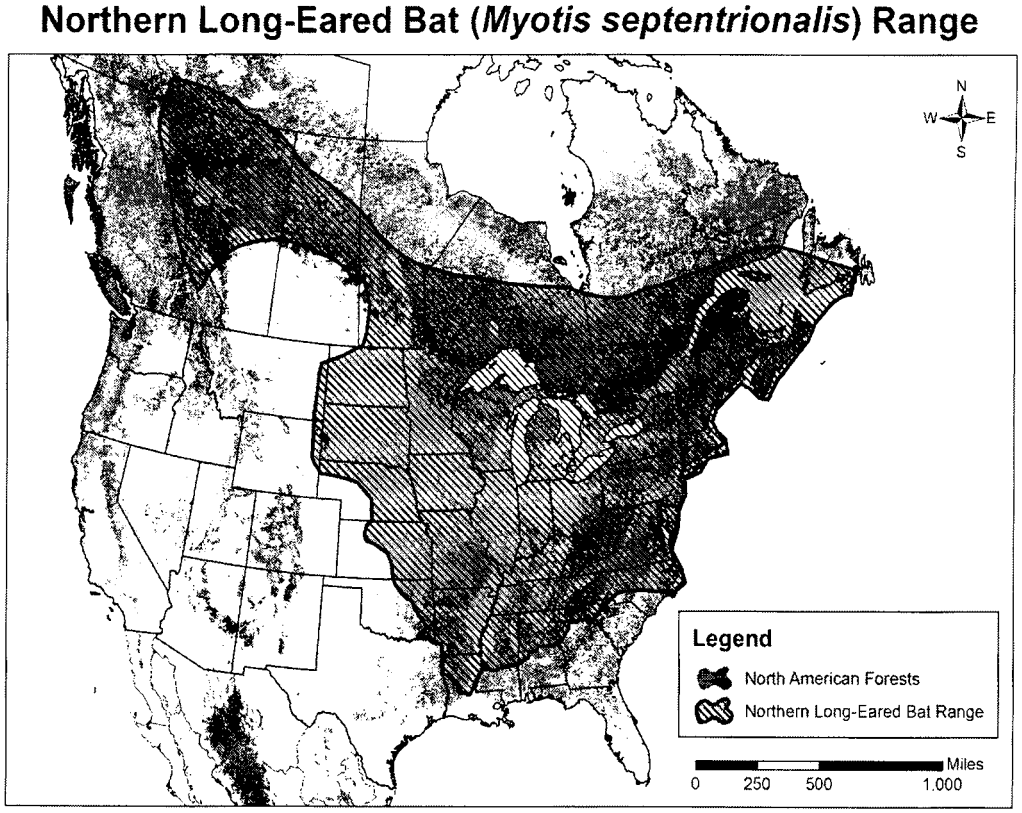

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Eastern Range

For purposes of organization in this rule, the eastern geographic area includes the following States and the District of Columbia: Delaware, Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Vermont, Virginia, West Virginia, New York, and Rhode Island. Historically, the northern long-eared bat was widely distributed in the eastern part of its range (Caceres and Barclay 2000, p. 2). Prior to documentation of WNS, northern long-eared bats were consistently caught during summer mist-net surveys and detected during acoustic surveys in the eastern United States (Service 2014, unpublished data). Northern long-eared bats continue to be distributed across much of the historical range, but there are many gaps within the range where bats are no longer detected or captured, and in other areas, their occurrence is sparse. Similar to summer distribution, northern long-eared bats were known to occur in many hibernacula throughout the East. Since WNS has been

documented, multiple hibernacula now have zero reported northern long-eared bats. Frick *et al.* (2015, p. 6) documented the local extinction of northern long-eared bats from 69 percent of sites included in their analyses (468 sites where WNS has been present for at least 4 years in Vermont, New York, Pennsylvania, Maryland, West Virginia, and Virginia).

In Delaware, the species is rare, but has been found at two hibernacula within the State during winter or fall swarming periods. Summer mist-net surveys have documented 14 individuals all from New Castle County, and there is also a historical record from this county in 1974 (Niederriter 2012, pers. comm.; Delaware Division of Fish and Wildlife 2014, in litt.). WNS was confirmed in the State in the winter of 2009–2010, and WNS was confirmed in Delaware in the two northern long-eared bat hibernacula during the winters of 2011–2012 and 2012–2013 (Delaware Division of Fish and Wildlife 2014, in litt.). Mortality of northern long-eared bats due to WNS has been documented at both of these hibernacula during winter surveys.

In Connecticut, the northern long-eared bat was historically one of the most commonly encountered bats in the State, and was documented Statewide (Dickson 2011, pers. comm.). WNS was first confirmed in Connecticut in the winter of 2008–2009. Prior to WNS detection in Connecticut, northern long-eared bats were found in large numbers (*e.g.,* often greater than 400 and up to 1,000 individuals) in hibernacula; however, no northern long-eared bats were found in any of the eight known hibernacula in the State (where the species was found prior to WNS) in 2012 or 2013 surveys (Service 2015, unpublished data).

In Maine, three bat hibernacula are known, and northern long-eared bats have been observed in all of these sites. The species has also been found in the summer in Acadia National Park (DePue 2012, unpublished data), where northern long-eared bats were fairly common in 2009–2010 (242 northern long-eared bats captured, comprising 27 percent of the total captures for the areas surveyed) (National Park Service (NPS) 2010, unpublished data). Recent findings from Acadia National Park show a precipitous decline in the northern long-eared bat population in less than 4 years, based on mist-net surveys conducted 2008–2014 (NPS 2014, in litt.). WNS was first confirmed in the State in the winter of 2010–2011. Prior to WNS, the northern long-eared bat was found in numbers greater than 100 at two of the three regularly surveyed hibernacula; however, in 2013, only one northern long-eared bat was found during surveys conducted at all three of the State's primary hibernacula (Maine Department of Inland Fisheries and Wildlife (MDIFW) 2013, in litt.). In addition, the northern long-eared bat was infrequently found in summer acoustic surveys conducted in the State in 2013, which contrasts with widespread, frequent acoustic detections of *Myotis* species and mist net captures of northern long-eared bats prior to WNS impact (MDIFW 2015, in litt.).

In Maryland, there are eight known hibernacula for the northern long-eared bat, three of which are railroad tunnels (Maryland Department of Natural Resources (MD DNR) 2014, unpublished data). WNS was first confirmed in Maryland in the winter of 2009–2010. In all five of the known caves or mines in the State, the species is thought to be extirpated due to WNS (MD DNR 2014, unpublished data). It is unknown if the species is extirpated from the known railroad tunnel hibernacula in the State, primarily because the majority of bats in these hibernacula are not visible or accessible during winter hibernacula surveys; however, no northern long-eared bats have been observed in accessible areas in these tunnel hibernacula during recent winter surveys (MD DNR 2014, unpublished data). Acoustic surveys conducted since 2010 (pre- and post-WNS) in the western portion of Maryland have also demonstrated northern long-eared bat declines due to WNS (MD DNR 2014, unpublished data).

In Massachusetts, there are seven known hibernacula. WNS was first confirmed in the State in the winter of 2007–2008. Previous to WNS confirmation in the State, the northern long-eared bat was found in relatively larger numbers for the species in some hibernacula. In 2013 and 2014 winter surveys conducted in Massachusetts hibernacula, either zero or one northern long-eared bat individual were found in all known hibernacula (Service 2015, unpublished data).

In New Hampshire, northern long-eared bats were known to inhabit at least nine mines and two World War II bunkers, and have been found in summer surveys (Brunkhurst 2012, unpublished data). The northern long-eared bat was one of the most common species captured (27 percent of captures) in the White Mountain National Forest in 1993–1994 (Sasse and Pekins 1996, pp. 93–95). WNS was confirmed in the State in the winter of 2008–2009. Data from both hibernacula surveys and summer surveys have shown a dramatic decline (99 percent) in northern long-eared bat numbers compared to pre-WNS numbers (NHFG 2013, in litt.). Results from hibernacula surveys conducted at four of New Hampshire's hibernacula in 2014 found no northern long-eared bats; previous to WNS infection, the species was found in relatively high numbers (*e.g.,* 75–127 individuals) in most of these hibernacula. Furthermore, a researcher conducted mist-net surveys over 7 years pre-and post-WNS (2005–2011) at Surry Mountain Lake in Cheshire County, New Hampshire, and found a 98 percent decline in capture rate of northern long-eared bats (Moosman *et al.* 2013, p. 554).

In New Jersey, one of the seven known northern long-eared bat hibernacula is a cave, and the rest are mines (Markuson 2011, unpublished data). Northern long-eared bats consisted of 6 to 14 percent of the total number of summer captures at Wallkill River National Wildlife Refuge from 2006–2010 (Kitchell and Wight 2011, in litt.). WNS was first confirmed in the State in the winter of 2008–2009. There have been limited consistent hibernacula and summer surveys conducted in the State to enable analyses of northern long-eared bat population trends pre- and post-WNS. Although small sample sizes precluded statistical comparison, Kitchell and Wight (2011, in litt.) and Bohrman and Fecske (2013, p. 77) documented a slight, overall decline in annual northern long-eared bat mist-net captures at Great Swamp National Wildlife Refuge following the outbreak of WNS. For 3 years prior to the disease's local emergence (2006–2008), northern long-eared bats represented 8–9 percent of total bats captured. Although the northern long-eared bat capture rate rose to 14 percent in 2009, it dropped to 6 percent in 2010, and further to 2 percent in 2012, suggesting a downward trend.

Historically, the northern long-eared bat was found in both summer and winter surveys conducted across Pennsylvania (Pennsylvania Game Commission (PGC) 2014, in litt.). Historically, the species was found in 112 hibernacula in the State. Fall swarm trapping conducted in September and October of 1988–1989, 1990–1991, and 1999–2000 at two hibernacula with large historical numbers of northern long-eared bats had total captures ranging from 6 to 30 bats per hour, which demonstrated that the species was abundant at these hibernacula (PGC 2012, unpublished data). WNS was first confirmed in the State in 2008–2009. Since that time, northern long-eared bat

winter survey numbers declined by 99 percent, in comparison to pre-WNS numbers (PGC 2014, in litt.; PGC 2014, unpublished data). Currently, the northern long-eared bat can still be found in portions of Pennsylvania during the summer; however, the number of summer captures continues to decline. The number of summer captures has declined an additional 15 percent annually, amounting to an overall decline of 76 percent (not including survey information from 2014) from pre-WNS capture rates. The PGC stated that the data support that the decline is attributable to WNS, rather than a lack of habitat or other direct impacts (PGC 2014, in litt.).

In Vermont, the northern long-eared bat was once one of the State's most common bats, but is now its rarest (Vermont Fish and Wildlife Department (VFWD) 2014, in litt.). Prior to 2009, the species was found in 16 hibernacula, totaling an estimated 458 animals, which was thought to be an underestimate due to the species' preference for hibernating in hibernacula cracks and crevices (VFWD 2014, unpublished data). WNS was confirmed in Vermont in the winter of 2007–2008. According to the VFWD, it is believed that all of the State's caves and mines that serve as bat hibernacula are infected with WNS. State-wide hibernacula, summer mist-net, and acoustic and fall swarm data collected in 2010 documented 93–100 percent declines in northern long-eared bat populations post-WNS (VFWD 2014, in litt.). In most recent surveys, few northern long-eared bats were found in three hibernacula in 2012–2013; however no individuals were found in any surveyed hibernacula in 2013–2014 winter surveys. Prior to WNS detection, summer capture data (from 2001–2007) indicated that northern long-eared bats comprised 19 percent of bats captured, and the northern long-eared bat was considered the second most common bat species in the State (Smith 2011, unpublished data). As for fall swarm data, in 2013, capture surveys at Aeolus Cave captured and identified 465 bats, only 3 of which were northern long-eared bats (VFWD 2014, in litt.).

In Virginia, the northern long-eared bat was historically considered ''fairly common'' during summer mist-net surveys; however, they were considered ''uncommon'' during winter hibernacula surveys and have been found in eight hibernacula (Reynolds 2012, unpublished data). WNS was first confirmed in Virginia in 2008–2009. Prior to WNS detection in the State (prior to 2011), 1.4 northern long-eared bats were captured per 1,000 units of effort during summer mist-net surveys conducted at sites Statewide. In 2011, there was an increase in captures, with 3.1 bats captured per unit effort. However, in 2013 in the same survey areas, 0.05 northern long-eared bats were captured per 1,000 units of effort, which amounts to a 96 percent decline in the population (Virginia Department of Game and Inland Fisheries (VDGIF) 2014, unpublished data). In 2013, over 85 percent of summer surveys resulted in no northern long-eared bat captures. Fall swarm trends have been similar, with capture rates per hour declining from 3.6 in 2009, to 0.3 in 2012, amounting to a decline of 92 percent (VDGIF 2014, unpublished data).

In West Virginia, northern long-eared bats were historically found regularly in hibernacula surveys, but typically in small numbers (fewer than 20 individuals) in caves (Stihler 2012, unpublished data). The species has also been found in 41 abandoned coal mines during fall swarming surveys conducted from 2002 to 2011, in the New River Gorge National River and Gauley River National Recreation Area, both managed by the NPS; the largest number observed was 157 in one of the NPS mines (NPS 2011, unpublished data). The species has been found in 104 total hibernacula in the State. WNS was first documented in hibernacula in the eastern portion of West Virginia in the winter of 2008–2009. Similar to some other WNS-affected States, northern long-eared bats can still be found across the State (similar pre- and post-WNS distribution); however, it is unclear if northern long-eared bat abundance is greater in West Virginia than other WNS-affected States and, therefore, whether WNS impacts are less severe to date. Across the State, northern long-eared bat summer captures decreased from 32.5 percent in 2008, and 33.8 percent in 2011, to around 20 percent for all subsequent years (West Virginia Division of Natural Resources 2014, unpublished data). However, percent capture data alone does not indicate whether the northern long-eared bat is declining in the State, especially if all bat captures are declining, as it only indicates their abundance relative to other bat species. Standardized catch per unit effort or other similar data are necessary to make population trend comparisons over time. Francl *et al.* (2012, p. 35) standardized data by captures per net night from 37 counties (31 counties pre-WNS (1997–2008) and 8 counties in 2010) in West Virginia, and had 1.4 captures per net-night pre-WNS and 0.3 captures per net night post-WNS. At one site monitored over time (Monongahela National Forest), average northern long-eared bat calls per mile of acoustic route declined by 31–81 percent (depending on software package used) from 2009–2012 (Johnson *et al.* 2014, unpaginated). Similarly, mist-net capture rates declined by 93 percent from 2006–2008 to 2014 (Johnson *et al.* 2014, unpaginated). Overall, although northern long-eared bats are still captured across West Virginia (*i.e.,* they have a similar distribution as they did pre-WNS), there are marked declines in capture rates.

In New York, the northern long-eared bat was historically one of the most widely distributed hibernating bat species in the State, identified in 90 out of 146 known bat hibernacula (New York State Department of Environmental Conservation (NYSDEC) 2014, in litt.). The species has also been observed in summer mist-net and acoustic surveys. Summer mist-net surveys conducted in New York (primarily for Indiana bat (*Myotis sodalis*) presence-absence surveys) from 2003–2008 resulted in a range of 0.21–0.47 northern long-eared bats per net night, and declined to 0.01 bats per net night in 2011 (Herzog 2012, unpublished data). New York is considered the epicenter for WNS, and the disease was first found in the State in the winter of 2006–2007. The NYSDEC confirmed that the decline experienced by this species due to WNS is both widespread and severe in the State (NYSDEC 2014, in litt.). Most hibernacula surveys conducted after the onset of WNS (2008 through 2013) found either one or zero northern long-eared bats (Service 2015, unpublished data). There are few long-term data sets for northern long-eared bats across the State, but one such site is the Fort Drum Military Installation, where acoustic surveys and mist-net surveys have monitored summer populations before (2003–2007) and after the onset of WNS (2008–2010). Ford *et al.* (2011, p. 130) reported significant declines (pre- vs. post-WNS) in mean acoustic call rates for northern long-eared bats as a part of this study at Fort Drum. No northern long-eared bats have been captured in mist-nets on Fort Drum since 2011.

There are two known hibernacula for bats in Rhode Island; however, no northern long-eared bats have been observed at either of these. There is also limited summer data available for the State; however, there were six summer records of northern long-eared bats from 2011 mist-net surveys in Washington County (Brown 2012, unpublished data).

We have no information regarding the species in the District of Columbia;

however WNS is presumed to be impacting the species because WNS occurs in all neighboring States.

Midwest Range

For purposes of organization in this rule, the midwestern geographic area includes the following States: Missouri, Illinois, Iowa, Indiana, Ohio, Michigan, Wisconsin, and Minnesota. The species is captured during summer mist-net surveys in varying abundance throughout most of the Midwest, and historically was considered one of the more frequently encountered bat species in the region. However, the species was historically observed infrequently and in small numbers during hibernacula surveys throughout the majority of its range in the Midwest. WNS has since been documented in Illinois, Indiana, Ohio, Michigan, Wisconsin, and Missouri. In Minnesota and Iowa, the presence of the fungus that causes WNS has been confirmed, but the disease itself has not been observed. Overall, clear declines in winter populations of northern long-eared bats have been observed in Ohio and Illinois (Service 2014, unpublished data).

There are no firm population size estimates for the northern long-eared bat rangewide; nor do we have the benefit of a viability analysis; however, a rough estimate of the population size in a portion of the Midwest has been calculated. That estimate shows there may have been more than four million bats in the six-State area that includes the States of Illinois, Indiana, Iowa, Ohio, Michigan, and Missouri (Meinke 2015, pers. comm.). This population size estimate (for the northern long-eared bat) was developed for the Midwest Wind Energy Multi-Species Habitat Conservation Plan (MSHCP) and was calculated by adjusting the 2013 Indiana bat winter population size (within the 6 States) based on the ratio of northern long-eared bats compared to Indiana bats in summer mist-net surveys. This estimate has limitations, however. The principal limitation is that the estimate is based on data that were primarily gathered prior to the onset of WNS in the Midwest; thus declines that have occurred in WNS-affected States are not reflected in the estimated number. Taking into account the documented effects of WNS in the Midwest to date (declines currently limited primarily to Ohio and Illinois), there may still be several million bats within the six-State area. Because post-WNS survey numbers for the species have not been included in this population estimate and WNS continues to spread throughout these 6 States, there is uncertainty as to the accuracy of this estimate, and it should be considered a rough estimate.

The northern long-eared bat has been documented in 76 of 114 counties in Missouri; its abundance in the summer is variable across the State and is likely related to the presence of suitable forest habitat and fidelity to historical summer areas. There are approximately 269 known northern long-eared bat hibernacula that are concentrated in the karst landscapes (characterized by underground drainage systems with sinkholes and caves) of central, eastern, and southern Missouri (Missouri Department of Conservation 2014, in litt.). Similar to other more predominantly karst areas, the northern long-eared bat is difficult to find in Missouri caves, and thus is rarely found in large numbers. *Pseudogymnoascus destructans* (Pd) was first detected in Missouri in the winter of 2009–2010; however, the majority of sites in the State that have been confirmed with WNS were confirmed more recently, during the winter of 2013–2014. Due to low numbers historically found in hibernacula in the State, it is difficult to determine if changes in count numbers are due to natural fluctuations or to WNS. However, there was one northern long-eared bat mortality observed during the winter of 2013–2014 (WNS Workshop 2014, pers. comm.). Furthermore, Elliott (2015, pers. comm.) noted that surveyors are detecting indicators of decline (changes in bat behavior) as well as actual declines in numbers of northern long-eared bats in hibernacula in the State. As for summer survey data, mist-net and acoustic surveys conducted across Missouri in the summer of 2014 indicate continued distribution throughout the State. However, there were fewer encounters with northern long-eared bats in some parts of the State in 2014, as compared to previous years. Specifically, surveys conducted on the Mark Twain National Forest in 2014 indicate a decline in the overall number of captures of all bat species, including fewer northern long-eared bats than expected (Amelon 2014, pers. comm.; Harris 2014, pers. comm.). Further, in southwest Missouri, northern long-eared bats have been encountered during mist-net surveys conducted on the Camp Crowder Training Site in 2006, 2013, and 2014. Overall, the number of northern long-eared bat captures has decreased since 2006, relative to the level of survey effort (number of net nights) (Missouri Army National Guard 2014, pp. 2–3; Robbins and Parris 2013, pp. 2–4, Robbins *et al.* 2014, p. 5). Additionally, during a 2-year survey (2013–2014) at a State park in north-central Missouri, 108 northern long-eared bats were captured during the first year, whereas only 32 were captured during the second year, with a similar level of effort between years (Zimmerman 2014, unpublished data).

In Illinois, northern long-eared bats have been found in both winter hibernacula counts and summer mist-net surveys. Northern long-eared bats have been documented in 21 hibernacula in Illinois, most of which are in the southern portion of the State (Davis 2014, p. 5). Counts of more than 100 bats have been documented in some hibernacula, and a high of 640 bats was observed in a southern Illinois hibernaculum in 2005; however, much lower numbers of northern long-eared bats have been observed in most Illinois hibernacula (Service 2015, unpublished data). WNS was first discovered in the State during the winter of 2012–2013. Mortality of northern long-eared bats was observed 1 year later, during the winter of 2013–2014, at two of the State's major hibernacula, which are in the central part of the State. At one hibernaculum, there was a drop-off in numbers of northern long-eared bats observed over the winter, with 371 individuals occupying the hibernaculum in November of 2013, and by March of 2014, there were 10 individuals, which amounts to a 97 percent decline (Davis 2014, pp. 6–18). At the other hibernaculum, in March of 2013, there were 716 northern long-eared bats counted; in November of 2013, there were 171 individuals; and in March of 2014, there were 3 individuals, with a decline of over 99 percent (Davis 2014, pp. 6–18).

During the summer, northern long-eared bats have been observed in landscapes with a variety of forest cover throughout Illinois. Surveys conducted across the State, related to highway projects and research activities, resulted in the capture of northern long-eared bats in moderately forested counties in western and eastern Illinois (*e.g.,* Adams, Brown, and Edgar Counties), as well as in northern counties where forests are highly limited (*e.g.,* Will and Kankakee Counties) (Mengelkoch 2014, unpublished data; Powers 2014, unpublished data). Pre-WNS, northern long-eared bats were regularly caught in mist-net surveys in the Shawnee National Forest in southern Illinois (Kath 2013, pers. comm.). The average number of northern long-eared bats caught during surveys between 1999 and 2011 at Oakwood Bottoms in the Shawnee National Forest was fairly consistent (Carter 2012, pers. comm.). Summer bat surveys in 2007 and 2009

at Scott Air Force Base in St. Clair County resulted in a low numbers of captures (a few individuals) of northern long-eared bats, and, in 2014, no northern long-eared bats were encountered (Department of the Air Force 2007, pp. 10–14; Department of the Air Force 2010, pp. 11–12). Overall, summer surveys from Illinois have not documented a decline due to WNS to date.

In Iowa, there are only summer mist-net records for the northern long-eared bat, and the species has not been documented in hibernacula in the State. Northern long-eared bats have been recorded during many mist-net surveys since the 1970s. Recent records include documented captures in 13 of 99 counties across the central and southeastern portions of the State. In 2011, 8 individuals (including 3 lactating females) were captured in west-central Iowa (Howell 2011, unpublished data). During summer 2014, one nonreproductive female was tracked to a roost in Fremont County in southwest Iowa (Environmental Solutions and Innovations, Inc. 2014, pp. 52–56). In Scott County, southeastern Iowa, four female northern long-eared bats (two pregnant and two nonreproductive) were captured in June 2014, along the Wapsi River (Chenger and Tyburec 2014, p. 6). WNS has not been detected in Iowa to date; however, the fungus that causes WNS was first found at a hibernaculum in Iowa in the winter of 2011–2012.

Northern long-eared bats have been observed in both winter hibernacula surveys and, more commonly, in summer surveys in Indiana. Indiana has 25 known hibernacula with winter records of one or more northern long-eared bat. However, it is difficult to find large numbers of individuals in caves and mines during hibernation in Indiana (Whitaker and Mumford 2009, p. 208). Therefore, reliable winter population estimates are largely lacking in Indiana. WNS was confirmed in the State in the winter of 2010–2011. Although population trends are difficult to assess because of historically low numbers, mortality of northern long-eared bats due to WNS has been confirmed in the State (WNS Workshop 2014, pers. comm.). Historically, the northern long-eared bat was considered common throughout much of Indiana, and was the fourth or fifth most abundant bat species captured during summer surveys in the State in 2009. The species has been captured in at least 51 of 92 counties, often captured in mist-nets along streams, and was the most common bat taken by trapping at mine entrances (Whitaker and Mumford 2009, pp. 207–208). The abundance of northern long-eared bats appears to vary geographically within Indiana during the summer. For example, during three summers (1990, 1991, and 1992) of mist-netting in the northern half of Indiana, 37 northern long-eared bats were captured at 22 of 127 survey sites, and they only represented 4 percent of all bats captured (King 1993, p. 10). In contrast, northern long-eared bats were the most commonly captured bat species (38 percent of all bats captured) during three summers (2006, 2007, and 2008) of mist-netting on two State forests in south-central Indiana (Sheets *et al.* 2013, p. 193). The differences in abundance in north versus south Indiana are due to there being few hibernacula in northern Indiana; consequently, migration distances to suitable hibernacula are great, and the species is not as common in summer surveys in the northern as in the southern portion of the State (Kurta 2013, in litt.). Long-term summer mist-netting surveys in Indiana have started to show a potential downward trend in northern long-eared bat numbers (*e.g.,* Indianapolis airport project, Interstate Highway 69 project; Service 2015, unpublished data); however, there was fluctuation in the count numbers from these surveys prior to WNS detection in the State, and it may be too early to confirm a downward trend based on these data. In Indiana, the Hardwood Ecosystem Experiment has collected summer mist-net data from 2006 through 2014 for the northern long-eared bat in Morgan-Monroe and Yellowwood State Forests, and has found consistent numbers of bats captured to date (Service 2015, unpublished data).

In Ohio, there are seven known hibernacula (Norris 2014, unpublished data) used by northern long-eared bat, and the species is regularly collected Statewide as incidental catches in summer mist-net surveys for Indiana bats (Boyer 2012, pers. comm.). WNS was first detected in the State in the winter of 2010–2011. Two hibernacula in Ohio contained approximately 90 percent of the State's overall winter bat population prior to WNS detection. The pre-WNS combined population average (5 years of survey data) for both sites was 282 northern long-eared bats, which declined to 17 northern long-eared bats in winter 2013–2014 (post-WNS). This amounts to a decline of northern long-eared bats from pre-WNS numbers of 90 percent in one of the hibernacula and 100 percent in the other (Norris 2014, pp. 19–20; Ohio Department of Natural Resources (ODNR) 2014, unpublished data). The (ODNR) conducted Statewide summer acoustic surveys along driving transects across the State from 2011 to 2014. Although they have not yet analyzed calls for individual species, such as the northern long-eared bat, initial results indicate a 56 percent decline in recorded *Myotis* bat species' calls over the 3-year period (ODNR 2014, unpublished data). Capture rates from mist-net surveys, which were primarily conducted to determine Indiana bat presence, were conducted pre-WNS detection in Ohio (2007–2011) and were compared to capture rates post-WNS (2012–2013), and it was found that capture rates of northern long-eared bats declined by 58 percent per mist-net site post-WNS (Service 2015, unpublished data). Several parks in Summit County, Ohio, have been conducting mist-net surveys for northern long-eared bats (among other bat species) since 2004 (Summit Metro Parks 2014, in litt.), with numbers fluctuating. Their data noted a potential slight decline in northern long-eared bat numbers prior to WNS (however, there was a slight increase in 2011), and after WNS was detected in the area, a sharp decline was documented in capture rates. In surveys conducted in 2013 and 2014, no northern long-eared bats were captured at any of the parks surveyed (where the species was previously found; Summit Metro Parks 2014, in litt.).

In Michigan, the northern long-eared bat is known from 36 (physical detections in 33 counties and acoustic detections from 3 additional counties) of 83 counties and is commonly encountered in parts of the northern Lower Peninsula and portions of the Upper Peninsula (Kurta 1982, p. 301; Kurta 2013, pers. comm.; Bohrman 2015, pers. comm.). WNS was first confirmed in Michigan in the winter of 2014–2015. Cave bat mortality was documented in 2014–2015, although mortality was not specifically confirmed for northern long-eared bats. The majority of hibernacula in Michigan are in the northern and western Upper Peninsula; therefore, there are very few cave-hibernating bats in general in the southern half of the Lower Peninsula during the summer because the distance to hibernacula is too great (Kurta 1982, pp. 301–302). It is thought that the few bats that do spend the summer in the southern half of the Lower Peninsula may hibernate in caves or mines in neighboring States (Kurta 1982, pp. 301–302).

In Wisconsin, the northern long-eared bat was historically reported as one of the least abundant bats, based on hibernacula surveys, acoustic surveys,

and summer mist-netting efforts (Amelon and Burhans 2006, pp. 71–72; Redell 2011, pers. comm.). However, summer surveys conducted in 2014 revealed a more widespread distribution than previously thought (Wisconsin Department of Natural Resources (WDNR) 2014, unpublished data). In the summer of 2014, WDNR radio-tracked 12 female northern long-eared bats in four regions in the State and collected information on selected roost tree species and characteristics (WNDR 2014, unpublished data). In addition, acoustic and mist-net data was collected by a pipeline project proponent in 2014, which resulted in new records for the species in many surveyed areas along a corridor from the northwest part through the southeast part of the State (WDNR 2014, unpublished data). The northern long-eared bat has been observed in 67 hibernacula in the State. WNS was confirmed in Wisconsin in the winter of 2013–2014. A recent population viability analysis in Wisconsin found that ''there are no known natural refugia or highly resistant sites on the landscape, which will likely lead to statewide extinction of the species once WNS infects the major hibernacula'' (Peery *et al.* 2013, unpublished data; WDNR 2014, in litt.).

The northern long-eared bat is known from 11 hibernacula in Minnesota. WNS has not been detected in Minnesota; however, the fungus that causes WNS was detected in 2011–2012. Prior to 2014, there was little information on northern long-eared bat summer populations in the State. In 2014, passive acoustic surveys conducted at a new proposed mining area in central St. Louis County detected the presence of northern long-eared bats at each of 13 sites sampled, accounting for approximately 14 percent of all recorded bat calls (Smith *et al.* 2014, pp. 3–4). Mist-net surveys in 2014 at seven sites on Camp Ripley Training Center, Morrison County, resulted in capture of 4 northern long-eared bats (5 percent of total captures), and at five sites on the Superior National Forest, Lake and St. Louis Counties, resulted in capture of 24 northern long-eared bats (55 percent of total captures) (Catton 2014, pp. 2–3). Acoustic and mist-net data were collected by a pipeline project proponent in 2014, which surveyed a 300-mile (mi) (483-kilometer (km)) corridor through the northern third of the State. Positive detections were recorded for Hubbard, Cass, Crow Wing, Aitkin, and Carlton Counties, and northern long-eared bats were the most common species captured by mist-net (Merjent 2014, unpublished data). Mist-net surveys were conducted the previous year (2013) on the Kawishiwi District of the Superior National Forest, and resulted in capture of 13 northern long-eared bats (38 percent of total captures) over nine nights of netting at eight sites (Grandmaison *et al.* 2013, pp. 7–8).

Southern Range

For purposes of organization in this rule, southern geographic area includes: Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Tennessee. In the South, the northern long-eared bat is considered more common in States such as Kentucky and Tennessee, and less common in the southern extremes of its range (*e.g.,* Alabama, Georgia, and South Carolina). The absence of widespread survey efforts in several States is likely limiting the known range of the species, as well as information on its relative abundance (Armstrong 2015, pers. comm.). In the southern part of the species' range, Kentucky is the only State with Statewide survey data prior to 2010, primarily as a result of survey efforts for other listed bats species, such as the Indiana bat. WNS has been documented at many northern long-eared bat hibernacula in this region, with mortality confirmed at many sites.

Northern long-eared bats were historically observed in the majority of hibernacula in Kentucky and have been a commonly captured species during summer surveys (Lacki and Hutchinson 1999, p. 11; Hemberger 2015, pers. comm.). The northern long-eared bat has been documented throughout the majority of Kentucky, with historical records in 91 of its 120 counties. Eighty-five counties have summer records, and 68 of those include reproductive records (*i.e.,* captures of juveniles or pregnant, lactating, or post-lactating adult females) (Hemberger 2015, pers. comm.). WNS was first observed in Kentucky in 2011. Currently there are more than 60 known WNS-infected northern long-eared bat hibernacula in the State (Kentucky Department of Fish and Wildlife Resources (KDFWR) 2014, unpublished data). Bat mortality at infected sites was first documented in 2013, and increased in 2014 (KDFWR 2014, unpublished report). However, population trends are difficult to assess as northern long-eared bat numbers in these hibernacula have historically been variable. Summer survey data for Kentucky lack a standardized unit of effort and, therefore, cannot be used to assess population trends. However, Silvis *et al.* (2015, p. 6) documented significant summer population declines within four maternity colonies on Fort Knox Military Installation during their 3-year study (from 2012–2014), presumably due to WNS.

In Tennessee, northern long-eared bats have been observed in both summer mist-net surveys and winter hibernacula counts. Summer mist-net surveys from 2002 through 2013 resulted in the capture of more than 1,000 individuals, including males and juveniles or pregnant, lactating, or post-lactating adult females (Flock 2014, unpublished data). During the winter of 2009–2010, the Tennessee Wildlife Resource Agency (TWRA) began tracking northern long-eared bat populations and has since documented northern long-eared bats in 58 hibernacula, with individual hibernaculum populations ranging from 1 to 136 individuals (TWRA 2014, unpublished data). According to TWRA, Tennessee has over 9,000 caves and less than 2 percent of those have been surveyed, which led them to suggest that there could be additional unknown northern long-eared bat hibernacula in the State (TWRA 2013, in litt.). WNS was first documented in Tennessee in the winter of 2009–2010. WNS-related mortality was documented (including northern long-eared bat mortality) in 2014 (WNS Workshop 2014, pers. comm.); however, there is no pre-WNS data from these sites, and we cannot draw any conclusions regarding population trends based on hibernacula surveys. TWRA (2013, in litt.) indicates that summer mist-netting data for the eastern portion of the State showed a pre-WNS (2000–2008) capture frequency of 33 percent and post-WNS (2010–2012) capture frequency of 31 percent. These data do not have a standardized unit of effort, and, therefore, they cannot be used to assess population trends. Conversely, Lamb (2014, pers. comm.) observed declines in summer capture trends of several species of bats, including the northern long-eared bat, at Arnold Air Force Base in south-central Tennessee from 1998 to 2014. In the Great Smoky Mountains National Park, 2014 capture rates of northern long-eared bats in comparison to 2009–2012 declined by 71 to 94 percent (across all sites) based on unit of effort comparisons (NPS 2014, in litt.; Indiana State University 2015, in litt.).

In 2000, during sampling of bat populations in the Kisatchie National Forest, Louisiana, three northern long-eared bats, including two males and one lactating female, were collected. These were the first official records of the species from Louisiana, and the presence of a reproductive female likely represents a resident summer colony

(Crnkovic 2003, p. 715). Northern long-eared bats have not been documented using caves in Louisiana, including the five known caves that occur within 54 miles (87 km) of the collection site (Crnkovic 2003, p. 715). Neither WNS nor the fungus that cause WNS has been detected in Louisiana to date.

In Georgia, northern long-eared bat winter records are rare (Georgia Department of Natural Resources (GA DNR) 2014, in litt.). However, this species is commonly captured during summer mist-net surveys (GA DNR 2014, in litt.). Twenty-four summer records were documented between 2007 and 2011. Mist-net surveys were conducted in the Chattahoochee National Forest in 2001–2002 and 2006–2007, with 51 total individual records for the species (Morris 2012, unpublished data). WNS was first detected in the State in the winter of 2012–2013. With historically small numbers of northern long-eared bats found in hibernacula surveys in Georgia, we cannot draw conclusions regarding population trends based on hibernacula surveys. WNS-related mortality has been documented in cave bats in the State; however, northern long-eared bat mortality has not been documented to date.

Northern long-eared bats have been documented in 22 hibernacula in North Carolina. All known hibernacula are caves or mines located in the western part of the State (North Carolina Wildlife Resources Commission 2014, unpublished data), although summer records for the species exist for both the eastern and western parts of the State. In the summer of 2007, six northern long-eared bats were captured in Washington County, North Carolina (Morris *et al.* 2009, p. 356). Both adults and juveniles were captured, suggesting that there is a reproducing resident population (Morris *et al.* 2009, p. 359). Reproductive females and adult males have recently been documented in the northeastern part of the State. Mist-netting and acoustic data indicate that the northern long-eared bat may be active almost year-round in eastern portions of the State, likely due to mild winter temperatures and insect availability in coastal counties (North Carolina Department of Transportation 2014, in litt.). In North Carolina, WNS was first documented in the winter of 2008–2009. Northern long-eared bats have declined by 95 percent in hibernacula where WNS has been present for 2 or more years, with smaller declines documented in hibernacula infected for less than 2 years (Weeks and Graeter 2014, pers. comm.).

Northern long-eared bats are known from the mountain region of three counties in northwestern South Carolina: Oconee, Pickens, and Greenville. There are two known northern long-eared bat hibernacula in the State: one is a cave that had 26 northern long-eared bats present in 1995, but has not been surveyed since, and the other is a tunnel where only one bat was found in 2011 (Bunch 2011, unpublished data). In South Carolina, WNS was first documented in the winter of 2012–2013. Bat mortality due to WNS has not been documented to date. Winter northern long-eared bat records are infrequent in the State. When present in hibernacula counts, their numbers range from 24 (1995 survey of a Pickens County hibernaculum) to single records in Oconee County (South Carolina Department of Natural Resources 2015, in litt.). Thus, population trends cannot be determined based on hibernacula surveys, due to historically low numbers of northern long-eared bats found.

Northern long-eared bats are known from 41 hibernacula in Arkansas, although there are typically few individuals (*e.g.,* fewer than 10 individuals) observed (Sasse 2012, unpublished data). Saugey *et al.* (1993, p. 104) reported the northern long-eared bat to be rather common during fall swarming at abandoned mines in the Ouachita Mountains. Additionally, Heath *et al.* (1986, p. 35) found 57 pregnant females roosting in a mine in the spring of 1985. Summer surveys in the Ouachita Mountains of central Arkansas from 2000–2005 tracked 17 males and 23 females to 43 and 49 day-roosts, respectively (Perry and Thill 2007, pp. 221–222). In 2013 summer surveys in the Ozark St. Francis National Forest, the northern long-eared bat was the most common species captured (Service 2014, unpublished data). Pd was first detected in the State in the winter of 2011–2012; however, WNS was confirmed at different sites (than where Pd was first confirmed) in 2013–2014. Northern long-eared bat mortality was documented (five individuals) from one of the sites where WNS was first confirmed in 2013–2014 (WNS Workshop 2014, pers. comm.). Mortality of northern long-eared bats from WNS was observed in the State's largest hibernacula in 2015; 2015 surveys found 120 northern long-eared bats in that hibernacula, where counts in recent years often numbered 200 to 300 (Bitting 2015, pers. comm.).

Northern long-eared bats are known from two hibernacula in Alabama, where typically few individuals (*e.g.,* fewer than 20) are observed (Sharp 2014, unpublished data). Surveys conducted during the Southeast Bat Diversity Network bat blitz in 2008 reported the northern long-eared bat to be rather common in late summer/early fall swarm at known bat caves in Alabama (Sharp 2014, unpublished data). Summer surveys, mostly conducted between 2001 and 2008, in Alabama have documented 71 individual captures, including both males and reproductively active females (Sharp 2014, unpublished data). WNS was first documented in Alabama in the winter of 2011–2012.

The northern long-eared bat is known to occur in seven counties along the eastern edge of Oklahoma (Stevenson 1986, p. 41). The species is known from nine hibernacula, where typically they are observed in low numbers (*e.g.,* 1 to 20 individuals). However, a larger colony uses a cave on the Ouachita National Forest in southeastern Oklahoma (LeFlore County) during the winter (9 to 96 individuals) and during the fall (9 to 463 individuals) (Perry 2014, pers. comm.). Northern long-eared bats have been recorded from 21 caves (7 of which occur on the Ozark Plateau National Wildlife Refuge) during the summer. The species has regularly been captured in summer mist-net surveys at cave entrances in Adair, Cherokee, Sequoyah, Delaware, and LeFlore Counties, and are often one of the most common bats captured during mist-net surveys at cave entrances in the Ozarks of northeastern Oklahoma (Stark 2013, pers. comm.; Clark and Clark 1997, p. 4). Small numbers of northern long-eared bats (typical range of 1 to 17 individuals) also have been captured during mist-net surveys along creeks and riparian zones in eastern Oklahoma (Stark 2013, pers. comm.; Clark and Clark 1997, pp. 4, 9–13). Neither WNS nor Pd has been detected in Oklahoma to date.

Although the northern long-eared bat was not considered abundant in Kentucky and Tennessee historically (Harvey *et al.* 1991, p. 192), research conducted from 1990–2012 found the species abundant in summer mist-net surveys (Hemberger 2012, pers. comm.; Pelren 2011, pers. comm.; Lacki and Hutchinson 1999, p. 11). With the exception of Kentucky and possibly portions of Tennessee, western North Carolina, and northwestern Arkansas, where the species appears broadly distributed, there simply was not historically adequate effort expended to determine how abundant the species was in States such as South Carolina, Georgia, Alabama, Mississippi, and Louisiana. Due to this lack of surveys,

historical variability of winter populations, or lack of standardized data, it is difficult to draw conclusions about winter population trends pre- and post-WNS introduction in this region. Similarly, summer population trends are also difficult to summarize at this time due to a lack of surveys or standardized data.

Western Range

For purposes of organization in this rule, this region includes the following States: South Dakota, North Dakota, Nebraska, Wyoming, Montana, and Kansas. The northern long-eared bat is historically less common in the western portion of its range than in the northern portion of the range (Amelon and Burhans 2006, p. 71), and is considered common in only small portions of the western part of its range (*e.g.,* Black Hills of South Dakota) and uncommon or rare in the western extremes of the range (*e.g.,* Wyoming, Kansas, Nebraska) (Caceres and Barclay 2000, p. 2); however, there has been limited survey effort throughout much of this part of the species' range. To date, WNS has not been found in any of these States.

The northern long-eared bat has been observed hibernating and residing during the summer in the Black Hills National Forest in South Dakota and is considered abundant in the region. Capture and banding data for survey efforts in the Black Hills of South Dakota and Wyoming showed northern long-eared bats to be the second most common bat banded (159 of 878 total bats) during 3 years of survey effort (Tigner and Aney 1994, p. 4). South Dakota contains 21 known hibernacula, all within the Black Hills, 9 of which are abandoned mines (Bessken 2015, pers. comm.). The largest number of northern long-eared bats was observed in a hibernaculum near Hill City, South Dakota; 40 northern long-eared bats were observed in this mine in the winter of 2002–2003 (Tigner and Stukel 2003, pp. 27–28). A summer population was found in the Dakota Prairie National Grassland and Custer National Forest in 2005 (Lausen undated, unpublished data). Using mist-nets and echolocation detectors, northern long-eared bats have also been observed in small numbers in the Buffalo Gap National Grasslands (Tigner 2004, pp. 13–30; Tigner 2005, pp. 7–18). Additionally, northern long-eared bats, including some pregnant females, have been captured during the summer along the Missouri River in South Dakota (Swier 2006, p. 5; Kiesow and Kiesow 2010, pp. 65–66). Swier (2003, p. 25) found that of 52 bats collected in a survey along the Missouri River, 42 percent were northern long-eared bats. Acoustic data recorded by bat monitoring stations operated by the South Dakota Department of Game, Fish, and Parks (SDDGFP) also detected the northern long-eared bat sporadically throughout the State (across 16 counties) in 2011 and 2012 (SDDGFP 2014, in litt.)

Summer surveys in North Dakota (2009–2011) documented the species in the Turtle Mountains, the Missouri River Valley, and the Badlands (Gillam and Barnhart 2011, pp. 10–12). No northern long-eared bat hibernacula are known within North Dakota. During the winters of 2010–2013, Barnhart (2014, unpublished; Western Area Power Administration 2015, in litt.) documented 3 bat hibernacula and 18 potential hibernacula in Theodore Roosevelt National Park; however, no northern long-eared bat were found.

Northern long-eared bats have been observed at two quarries located in east-central Nebraska (Geluso 2011, unpublished data). However, the species is known to summer in the northwestern parts of Nebraska, specifically Pine Ridge in Sheridan County, and a small maternity colony has been recently documented (Geluso *et al.* 2014, p. 2). A reproducing population has also been documented north of Valentine in Cherry County (Benedict *et al.* 2000, pp. 60–61). During an acoustic survey conducted during the summer of 2012, the species was present in Cass County (east-central Nebraska). Similarly, acoustic surveys in Holt County, on the Grand Prairie Wind Farm, observed the northern long-eared bat at five of seven sites (Mattson *et al.* 2014, pp. 2–3). Limestone quarries in Cass County are used as hibernacula by this species and others (White *et al.* 2012, p. 3). White *et al.* (2012, p. 2) state that the bat is uncommon or absent from extreme southeastern Nebraska; however, surveys in Otoe County found two northern long-eared bats, a female and a male, and telemetry surveys identified roosts in the county (Brack and Brack 2014, pp. 52–53).

During acoustic and mist-net surveys conducted throughout Wyoming in the summers of 2008–2011, 32 separate observations of northern long-eared bats were made in the northeast part of the State, and breeding was confirmed (U.S. Forest Service (USFS) 2006, unpublished data; Wyoming Game and Fish Department (WGFD) 2012, unpublished data). Northern long-eared bats have also been observed at Devils Tower National Monument in Wyoming during the summer months, and primarily used forested areas of the monument (NPS 2014, in litt.). To date, there are no known hibernacula in Wyoming, and it is unclear if there are existing hibernacula used by northern long-eared bats, although the majority of potential hibernacula (abandoned mines) within the State occur outside of the northern long-eared bat's range (Tigner and Stukel 2003, p. 27; WGFD 2012, unpublished data).

Montana has only one known record of a northern long-eared bat in the State, a male collected in an abandoned coal mine in 1978 in Richland County (Montana Fish, Wildlife, and Parks (MFWP) 2012, unpublished data). The species has not been reported in eastern Montana since the 1978 record, despite mist-net and acoustic surveys conducted in the eastern portion of the State through 2014 (Montana Natural Heritage Program 2015, in litt.). The specimen of this single bat collected in the State is currently undergoing genetic testing to determine whether the record is indeed a northern long-eared bat (Montana Natural Heritage Program 2015, in litt.; MFWP 2015, in litt.).

In Kansas, the northern long-eared bat was first documented in 1951, when individual bats were documented hibernating in the gypsum mines of Marshall County (Schmidt *et al.* 2015, unpaginated). The status of the gypsum mines as hibernaculum in Kansas is widely unknown. Northern long-eared bats were thought to only migrate through central Kansas until pregnant females were discovered in north-central Kansas in 1994 and 1995 (Sparks and Choate 1995, p. 190). Since then, northern long-eared bats have been considered relatively common in riparian woodlands in Phillips, Rooks, Graham, Osborne, Ellis, and Russel Counties (Schmidt *et al.* 2015, unpaginated).

Canadian Range

The northern long-eared bat occurs throughout the majority of the forested regions of Canada, although it is found in higher abundance in eastern Canada than in western Canada, similar to in the United States (Caceres and Pybus 1997, p. 6). However, the scarcity of records in the western parts of Canada may be due to more limited survey efforts. It has been estimated that approximately 40 percent of the northern long-eared bat's global range is in Canada (Committee on the Status of Endangered Wildlife in Canada (COSEWIC) 2012, p. 9). The population size for the northern long-eared bat in Canada is unknown, but likely numbered over a million prior to the 2010 arrival of WNS in Canada (COSEWIC 2013, p. xv1). The range of the northern long-eared bat in Canada includes Alberta, British Columbia,

Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Prince Edward Island, Ontario, Quebec, Saskatchewan, and Yukon (COSEWIC 2012, p. 4). There are no records of the species overwintering in Yukon and Northwest Territories (COSEWIC 2012, p. 9).

Habitat

Winter Habitat

Northern long-eared bats predominantly overwinter in hibernacula that include caves and abandoned mines. Hibernacula used by northern long-eared bats vary in size from large, with large passages and entrances (Raesly and Gates 1987, p. 20), to much smaller hibernacula (Kurta 2013, in litt.). These hibernacula have relatively constant, cooler temperatures (0 to 9 degrees Celsius (°C) (32 to 48 degrees Fahrenheit (°F))) (Raesly and Gates 1987, p. 18; Caceres and Pybus 1997, p. 2; Brack 2007, p. 744), with high humidity and no air currents (Fitch and Shump 1979, p. 2; van Zyll de Jong 1985, p. 94; Raesly and Gates 1987, p. 118; Caceres and Pybus 1997, p. 2). The sites favored by northern long-eared bats are often in very high humidity areas, to such a large degree that droplets of water are often observed on their fur (Hitchcock 1949, p. 52; Barbour and Davis 1969, p. 77). Northern long-eared bats, like eastern small-footed bats (*Myotis leibii*) and big brown bats (*Eptesicus fuscus*), typically prefer cooler and more humid conditions than little brown bats, but are less tolerant of drier conditions than eastern small-footed bats and big brown bats (Hitchcock 1949, pp. 52–53; Barbour and Davis 1969, p. 77; Caceres and Pybus 1997, p. 2). Northern long-eared bats are typically found roosting in small crevices or cracks in cave or mine walls or ceilings, sometimes with only the nose and ears visible, and thus are easily overlooked during surveys (Griffin 1940a, pp. 181–182; Barbour and Davis 1969, p. 77; Caire *et al.* 1979, p. 405; van Zyll de Jong 1985, p. 9; Caceres and Pybus 1997, p. 2; Whitaker and Mumford 2009, pp. 209–210). Caire *et al.* (1979, p. 405) and Whitaker and Mumford (2009, p. 208) commonly observed individuals exiting caves with mud and clay on their fur, also suggesting the bats were roosting in tighter recesses of hibernacula. Additionally, northern long-eared bats have been found hanging in the open, although not as frequently as in cracks and crevices (Barbour and Davis 1969, p. 77; Whitaker and Mumford 2009, pp. 209–210). In 1968, Whitaker and Mumford (2009, pp. 209–210) observed three northern long-eared bats roosting in the hollow core of stalactites in a small cave in Jennings County, Indiana.

To a lesser extent, northern long-eared bats have also been observed overwintering in other types of habitat that resemble cave or mine hibernacula, including abandoned railroad tunnels, (Service 2015, unpublished data). Also, in 1952, three northern long-eared bats were found hibernating near the entrance of a storm sewer in central Minnesota (Goehring 1954, p. 435). Kurta *et al.* (1997, p. 478) found northern long-eared bats hibernating in a hydroelectric dam facility in Michigan. In Massachusetts, northern long-eared bats have been found hibernating in the Sudbury Aqueduct (Massachusetts Department of Fish and Game 2012, unpublished data). Griffin (1945, p. 22) found northern long-eared bats in December in Massachusetts in a dry well, and commented that these bats may regularly hibernate in ''unsuspected retreats'' in areas where caves or mines are not present. Although confamilial (belonging to the same taxonomic family) bat species (*e.g.,* big brown bats) have been found using non-cave or mine hibernacula, including attics and hollow trees (Neubaum *et al.* 2006, p. 473; Whitaker and Gummer 1992, pp. 313–316), northern long-eared bats have only been observed over-wintering in suitable caves, mines, or habitat with the same types of conditions found in suitable caves or mines to date.

Summer Habitat

I. Summer Roost Characteristics

During the summer, northern long-eared bats typically roost singly or in colonies underneath bark or in cavities or crevices of both live trees and snags (Sasse and Pekins 1996, p. 95; Foster and Kurta 1999, p. 662; Owen *et al.* 2002, p. 2; Carter and Feldhamer 2005, p. 262; Perry and Thill 2007, p. 222; Timpone *et al.* 2010, p. 119). Males' and nonreproductive females' summer roost sites may also include cooler locations, including caves and mines (Barbour and Davis 1969, p. 77; Amelon and Burhans 2006, p. 72). Northern long-eared bats have also been observed roosting in colonies in human-made structures, such as in buildings, in barns, on utility poles, behind window shutters, and in bat houses (Mumford and Cope 1964, p. 72; Barbour and Davis 1969, p. 77; Cope and Humphrey 1972, p. 9; Burke 1999, pp. 77–78; Sparks *et al.* 2004, p. 94; Amelon and Burhans 2006, p. 72; Whitaker and Mumford 2009, p. 209; Timpone *et al.* 2010, p. 119; Bohrman and Fecske 2013, pp. 37, 74; Joe Kath 2013, pers. comm.).

The northern long-eared bat appears to be somewhat flexible in tree roost selection, selecting varying roost tree species and types of roosts throughout its range. Northern long-eared bats have been documented in roost in many species of trees, including: black oak (*Quercus velutina*), northern red oak (*Quercus rubra*), silver maple (*Acer saccharinum*), black locust (*Robinia pseudoacacia*), American beech (*Fagus grandifolia*), sugar maple (*Acer saccharum*), sourwood (*Oxydendrum arboreum*), and shortleaf pine (*Pinus echinata*) (*e.g.,* Mumford and Cope 1964, p. 72; Clark *et al.* 1987, p. 89; Sasse and Pekins 1996, p. 95; Foster and Kurta 1999, p. 662; Lacki and Schwierjohann 2001, p. 484; Owen *et al.* 2002, p. 2; Carter and Feldhamer 2005, p. 262; Perry and Thill 2007, p. 224; Timpone *et al.* 2010, p. 119). Northern long-eared bats most likely are not dependent on certain species of trees for roosts throughout their range; rather, many tree species that form suitable cavities or retain bark will be used by the bats opportunistically (Foster and Kurta 1999, p. 668). Carter and Feldhamer (2005, p. 265) hypothesized that structural complexity of habitat or available roosting resources are more important factors than the actual tree species.

In the majority of northern long-eared bat telemetry studies, roost trees consist predominantly of hardwoods (*e.g.,* Foster and Kurta 1999, p. 662; Lacki and Schwierjohann 2001, p. 484; Broders and Forbes 2004, p. 606). Broders and Forbes (2004, p. 605) reported that female northern long-eared bat roosts in New Brunswick were 24 times more likely to be shade-tolerant, deciduous trees than conifers. Of the few northern long-eared bat telemetry studies in which conifers represented a large proportion of roosts, most were reported as snags (*e.g.,* Cryan *et al.* 2001, p. 45; Jung *et al.* 2004, p. 329). Overall, these data suggest that hardwood trees most often provide the structural and microclimate conditions preferred by maternity colonies and groups of females, which have more specific roosting needs than solitary males (Lacki and Schwierjohann 2001, p. 484), although softwood snags may offer more suitable roosting habitat for both genders than hardwoods (Perry and Thill 2007, p. 222; Cryan *et al.* 2001, p. 45). One reason deciduous snags may be preferred over conifer snags is increased resistance to decay, and consequently roost longevity, of the former (USFS 1998).

Many studies have documented the northern long-eared bat's selection of both live trees and snags, with a range of 10 to 53 percent selection of live roosts found (Sasse and Pekins 1996, p. 95; Foster and Kurta 1999, p. 668; Lacki and Schwierjohann 2001, p. 484; Menzel *et al.* 2002, p. 107; Carter and Feldhamer 2005, p. 262; Perry and Thill 2007, p. 224; Timpone *et al.* 2010, p. 118). Foster and Kurta (1999, p. 663) found 53 percent of roosts in Michigan were in living trees, whereas in New Hampshire, 66 percent of roosts were in live trees (Sasse and Pekins 1996, p. 95). The use of live trees versus snags may reflect the availability of such structures in study areas (Perry and Thill 2007, p. 224) and the flexibility in roost selection when there is a sympatric bat species present (*e.g.,* Indiana bat) (Timpone *et al.* 2010, p. 120). Most telemetry studies describe a greater number of dead than live roosts (*e.g.,* Cryan *et al.* 2001, p. 45; Lacki and Schwierjohann 2001, p. 486; Timpone *et al.* 2010, p. 120; Silvis *et al.* 2012, p. 3). A significant preference for dead or dying trees was reported for northern long-eared bats in Kentucky (Silvis *et al.* 2012, p. 3), Illinois, and Indiana; in South Dakota (Cryan *et al.* 2001, p. 45) and West Virginia, northern long-eared bat roost plots contained a higher than expected proportion of snags (Owen *et al.* 2002, p. 4). Moreover, most studies reporting a higher proportion of live roosts included trees that had visible signs of decline, such as broken crowns or dead branches (*e.g.,* Foster and Kurta 1999, pp. 662,663; Ford *et al.* 2006, p. 20). Thus, the tendency for northern long-eared bats (particularly large maternity colonies) to use healthy live trees appears to be fairly low.

In tree roosts, northern long-eared bats are typically found beneath loose bark or within cavities and have been found to use both exfoliating bark and crevices to a similar degree for summer roosting habitat (Foster and Kurta 1999, p. 662; Lacki and Schwierjohann 2001, p. 484; Menzel *et al.* 2002, p. 110; Owen *et al.* 2002, p. 2; Perry and Thill 2007, p. 222; Timpone *et al.* 2010, p. 119).

Canopy coverage at northern long-eared bat roosts has ranged from 56 percent in Missouri (Timpone *et al.* 2010, p. 118), to 66 percent in Arkansas (Perry and Thill 2007, p. 223), to greater than 75 percent in New Hampshire (Sasse and Pekins 1996, p. 95), to greater than 84 percent in Kentucky (Lacki and Schwierjohann 2001, p. 487). Studies in New Hampshire and British Columbia have found that canopy coverage around roosts is lower than in available stands (Sasse and Pekins 1996, p. 95). Females tend to roost in more open areas than males, likely due to the increased solar radiation, which aids pup development (Perry and Thill 2007, p. 224). Fewer trees surrounding maternity roosts may also benefit juvenile bats that are starting to learn to fly (Perry and Thill 2007, p. 224). However, in southern Illinois, northern long-eared bats were observed roosting in areas with greater canopy cover than in random plots (Carter and Feldhamer 2005, p. 263). Roosts are also largely selected below the canopy, which could be due to the species' ability to exploit roosts in cluttered environments; their gleaning behavior suggests an ability to easily maneuver around obstacles (Foster and Kurta 1999, p. 669; Menzel *et al.* 2002, p. 112).

Results from studies have found the diameters of roost trees selected by northern long-eared bats vary greatly. Some studies have found that the diameter-at-breast height (dbh) of northern long-eared bat roost trees was greater than random trees (Lacki and Schwierjohann 2001, p. 485), and others have found both dbh and height of selected roost trees to be greater than random trees (Sasse and Pekins 1996, p. 97; Owen *et al.* 2002 p. 2). However, other studies have found that roost tree mean dbh and height did not differ from random trees (Menzel *et al.* 2002, p. 111; Carter and Feldhamer 2005, p. 266). Based on a consolidation of data from across the northern long-eared bat range (Sasse and Pekins 1996, pp. 95–96; Schultes 2002, pp. 49, 51; Perry 2014, pers. comm.; Lereculeur 2013, pp. 52–54; Carter and Feldhamer 2005, p. 263; Foster and Kurta 1999, p. 663; Lacki and Schwierjohann 2001, pp. 484–485; Owens *et al.* 2002, p. 3; Timpone *et al.* 2010, p. 118; Lowe 2012, p. 61; Perry and Thill 2007, p. 223; Lacki *et al.* 2009, p. 1,171), roost tree dbh most commonly used (close to 80 percent of over 400 documented maternity tree roosts) by northern long-eared bat maternity colonies range from 10 to 25 centimeters (cm) (4 to 10 inches).

As for elevation of northern long-eared bat roosts, Lacki and Schwierjohann (2001, p. 486) have found that northern long-eared bats roost more often on upper and middle slopes than lower slopes, which suggests a preference for higher elevations, possibly due to increased solar heating. Silvis *et al.* (2012, p. 4), found that selection of mid- and upper-slope roost areas may also be a function of the landscape position, whereby forest stands are most subjected to disturbance (*e.g.,* wind, more intense fire, more drought stress, higher incidence of insect attack) that in turn creates suitable roost conditions among multiple snags and trees within the stand.

Some studies have found tree roost selection to differ slightly between male and female northern long-eared bats. Some studies have found male northern long-eared bats more readily using smaller diameter trees for roosting than females, suggesting males are more flexible in roost selection than females (Lacki and Schwierjohann 2001, p. 487; Broders and Forbes 2004, p. 606; Perry and Thill 2007, p. 224). In the Ouachita Mountains of Arkansas, both sexes primarily roosted in pine snags, although females roosted in snags surrounded by fewer midstory trees than did males (Perry and Thill 2007, p. 224). In New Brunswick, Canada, Broders and Forbes (2004, pp. 606–607) found that there was spatial segregation between male and female roosts, with female maternity colonies typically occupying more mature, shade-tolerant deciduous tree stands and males occupying more conifer-dominated stands. Data from West Virginia at the Fernow Experimental Forest and the former Westvaco Ecosystem Research Forest (both of which contain both relatively unmanaged, older, mature stands; early successional/mid-age stands; and fire-modified stands) suggest that females choose smaller diameter, suppressed understory trees, whereas males often chose larger, sometimes canopy-dominant trees for roosts, perhaps in contrast to other tree-roosting myotids such as Indiana bats (Menzel *et al.* 2002, p. 112; Ford *et al.* 2006, p. 16; Johnson *et al.* 2009a, p. 239). A study in northeastern Kentucky found that males did not use colony roosting sites and were typically found occupying cavities in live hardwood trees, while females formed colonies more often in both hardwood and softwood snags (Lacki and Schwierjohann 2001, p. 486). However, males and nonreproductively active females are found roosting within home ranges of known maternity colonies the majority of the time (1,712 of 1,825 capture records or 94 percent) within Kentucky (Service 2014, unpublished data), suggesting little segregation between reproductive females and other individuals in summer.

II. Summer Roosting Behavior

Northern long-eared bats actively form colonies in the summer (Foster and Kurta 1999, p. 667) and exhibit fission-fusion behavior (Garroway and Broders 2007, p. 961), where members frequently coalesce to form a group (fusion), but composition of the group is in flux, with individuals frequently departing to be solitary or to form

smaller groups (fission) before returning to the main unit (Barclay and Kurta 2007, p. 44). As part of this behavior, northern long-eared bats switch tree roosts often (Sasse and Pekins 1996, p. 95), typically every 2 to 3 days (Foster and Kurta 1999, p. 665; Owen *et al.* 2002, p. 2; Carter and Feldhamer 2005, p. 261; Timpone *et al.* 2010, p. 119). In Missouri, the longest time spent roosting in one tree was 3 nights; however, up to 11 nights spent roosting in a human-made structure has been documented (Timpone *et al.* 2010, p. 118). Bats switch roosts for a variety of reasons, including temperature, precipitation, predation, parasitism, sociality, and ephemeral roost sites (Carter and Feldhamer 2005, p. 264). Ephemeral roost sites, with the need to proactively investigate new potential roost trees prior to their current roost tree becoming uninhabitable (*e.g.,* tree falls over), may be the most likely scenario (Kurta *et al.* 2002, p. 127; Carter and Feldhamer 2005, p. 264; Timpone *et al.* 2010, p. 119).

Fission-fusion dynamics also drives maternal roosting behaviors and relatedness within social groups of northern long-eared bats. Patriquin *et al.* (2013, p. 952) found that the average relatedness of social group members (northern long-eared bat individuals in nearby colonies that may occasionally share roosts) was low; however, familiar pairs of females (females that frequently roosted together) were more closely related than expected by chance. Consistent with these genetic findings, Garroway and Broders (2007, p. 960), Patriquin *et al.* (2010, p. 904), and Johnson *et al.* (2011, p. 227) observed nonrandom roosting behaviors, with some female northern long-eared bats roosting more frequently together than with other females.

Roosts trees used by northern long-eared bats are often in fairly close proximity to each other within the species' summer home range. For example, in Missouri, Timpone *et al.* (2010, p. 118) radio-tracked 13 northern long-eared bats to 39 roosts and found the mean distance traveled between roost trees was 0.67 km (0.42 mi) (range 0.05–3.9 km (0.03–2.4 mi)). In Michigan, the longest distance moved by the same bat between roosts was 2 km (1.2 mi), and the shortest was 6 meters (m) (20 feet (ft)) (Foster and Kurta 1999, p. 665). In the Ouachita Mountains of Arkansas, Perry and Thill (2007, p. 22) found that individuals moved among snags that were within less than 2 hectares (ha) (5 acres). Johnson *et al.* (2011, p. 227) found that northern long-eared bats form social groups in networks of roost trees often centered on a central-node roost. Central-node roost trees may be similar to Indiana bat primary roost trees (locations for information exchange, thermal buffering), but they were identified by the degree of connectivity with other roost trees rather than by the number of individuals using the tree (Johnson *et al.* 2011, p. 228).

Spring Staging

Spring staging for the northern long-eared bat is the time period between winter hibernation and spring migration to summer habitat (Whitaker and Hamilton 1998, p. 80). During this time, bats begin to gradually emerge from hibernation, exit the hibernacula to feed, but re-enter the same or alternative hibernacula to resume daily bouts of torpor (state of mental or physical inactivity) (Whitaker and Hamilton 1998, p. 80). The staging period for the northern long-eared bat is likely short in duration (Whitaker and Hamilton 1998, p. 80; Caire *et al.* 1979, p. 405). In Missouri, Caire *et al.* (1979, p. 405) found that northern long-eared bats moved into the staging period in mid-March through early May. In Michigan, Kurta *et al.* (1997, p. 478) determined that by early May, two-thirds of the *Myotis* species, including the northern long-eared bat, had dispersed to summer habitat. Variation in timing (onset and duration) of staging for Indiana bats was based on latitude and weather (Service 2007, pp. 39–40, 42); similarly, timing of staging for northern long-eared bats is likely based on these same factors.

Fall Swarming

The swarming season fills the time between the summer and winter seasons (Lowe 2012, p. 50) and the purpose of swarming behavior may include: Introduction of juveniles to potential hibernacula, copulation, and stopping over sites on migratory pathways between summer and winter regions (Kurta *et al.* 1997, p. 479; Parsons *et al.* 2003, p. 64; Lowe 2012, p. 51; Randall and Broders 2014, pp. 109–110). The swarming season for some species of the genus *Myotis* begins shortly after females and young depart maternity colonies (Fenton 1969, p. 601). During this time, both male and female northern long-eared bats are present at swarming sites (often with other species of bats). During this period, heightened activity and congregation of transient bats around caves and mines is observed, followed later by increased sexual activity and bouts of torpor prior to winter hibernation (Fenton 1969, p. 601; Parsons *et al.* 2003, pp. 63–64; Davis and Hitchcock 1965, pp. 304–306). For the northern long-eared bat, the swarming period may occur between July and early October, depending on latitude within the species' range (Fenton 1969, p. 598; Kurta *et al.* 1997, p. 479; Lowe 2012, p. 86; Hall and Brenner 1968, p. 780; Caire *et al.* 1979, p. 405). The northern long-eared bat may investigate several cave or mine openings during the transient portion of the swarming period, and some individuals may use these areas as temporary daytime roosts or may roost in forest habitat adjacent these sites (Kurta *et al.* 1997, pp. 479, 483; Lowe 2012, p. 51). Many of the caves and mines associated with swarming are also used as hibernacula for several species of bats, including the northern long-eared bat (Fenton 1969, p. 599; Glover and Altringham 2008, p. 1498; Randall and Broders 2014, p. 109; Kurta *et al.* 1997, p. 484; Whitaker and Rissler 1992a, p. 132).

Little is known about northern long-eared bat roost selection outside of caves and mines during the swarming period (Lowe 2012, p. 6). Lowe (2012, pp. 32, 58, 63) documented northern long-eared bats in the Northeast roosting in both coniferous and deciduous trees or stumps as far away as 3 miles (7 km) from the swarming site. Although Lowe (2012, pp. 61, 64) hypothesized that tree roosts used during the fall swarming season would be similar to summer roosts, there was a difference found between summer and fall in the variation in distances bats traveled from the capture site to roost, roost orientation, and greater variation of roost types (*e.g.,* roost species, size, decay class) in the fall. Greater variation among roosts during the swarming season may be a result of the variation in energy demands that individual northern long-eared bats exhibit during this time (Lowe 2012, p. 64; Barclay and Kurta 2007, pp. 31–32).

Biology

Hibernation

Northern long-eared bats hibernate during the winter months to conserve energy from increased thermoregulatory demands and reduced food resources. To increase energy savings, individuals enter a state of torpor, when internal body temperatures approach ambient temperature, metabolic rates are significantly lowered, and immune function declines (Thomas *et al.* 1990, p. 475; Thomas and Geiser 1997, p. 585; Bouma *et al.* 2010, p. 623). Periodic arousal from torpor naturally occurs in all hibernating mammals (Lyman *et al.* 1982, p. 92), although arousals remain among the least understood of hibernation phenomena (Thomas and

Geiser 1997, p. 585). Numerous factors (*e.g.,* reduction of metabolic waste, body temperature, and water balance) have been proposed to account for the occurrence and frequency of arousals (Thomas and Geiser 1997, p. 585). Each time a bat arouses from torpor, it uses a significant amount of energy to warm its body and increase its metabolic rate. The cost and number of arousals are the two key factors that determine energy expenditures of hibernating bats in winter (Thomas *et al.* 1990, p. 475). For example, little brown bats used as much fat during a typical arousal from hibernation as would be used during 68 days of torpor, and arousals and subsequent activity may constitute 84 percent of the total energy used by hibernating bats during the winter (Thomas *et al.* 1990, pp. 477–478).

In general, northern long-eared bats arrive at hibernacula in August or September, enter hibernation in October and November, and emerge from the hibernacula in March or April (Caire *et al.* 1979, p. 405; Whitaker and Hamilton 1998, p. 100; Amelon and Burhans 2006, p. 72). However, hibernation may begin as early as August (Whitaker and Rissler 1992b, p. 56). In Copperhead Cave (a mine) in west-central Indiana, the majority of bats enter hibernation during October, and spring emergence occurs from about the second week of March to mid-April (Whitaker and Mumford 2009, p. 210). In Indiana, northern long-eared bats become more active and start feeding outside the hibernaculum in mid-March, evidenced by stomach and intestine contents. This species also showed spring activity earlier than little brown bats and tri-colored bats (*Perimyotis subflavus*) (Whitaker and Rissler 1992b, pp. 56–57). In northern latitudes, such as in upper Michigan's copper-mining district, hibernation may begin as early as late August and continue for 8 to 9 months (Stones and Fritz, 1969, p. 81; Fitch and Shump 1979, p. 2). Northern long-eared bats have shown a high degree of philopatry (using the same site multiple years) for a hibernaculum (Pearson 1962, p. 30), although they may not return to the same hibernaculum in successive seasons (Caceres and Barclay 2000, p. 2).

Typically, northern long-eared bats were not abundant and composed a small proportion of the total number of bats observed hibernating in a hibernaculum (Barbour and Davis 1969, p. 77; Mills 1971, p. 625; Caire *et al.* 1979, p. 405; Caceres and Barclay 2000, pp. 2–3). Although usually observed in small numbers, the species typically inhabits the same hibernacula with large numbers of other bat species, and occasionally are found in clusters with these other bat species. Other species that commonly occupy the same habitat include little brown bat, big brown bat, eastern small-footed bat, tri-colored bat, and Indiana bat (Swanson and Evans 1936, p. 39; Griffin 1940a, p. 181; Hitchcock 1949, pp. 47–58; Stones and Fritz 1969, p. 79). Whitaker and Mumford (2009, pp. 209–210), however, infrequently found northern long-eared bats hibernating beside little brown bats, Indiana bats, or tri-colored bats. Barbour and Davis (1969, p. 77) found that the species was rarely recorded in concentrations of more than 100 in a single hibernaculum.

Northern long-eared bats have been observed moving among hibernacula throughout the winter, which may further decrease population estimates (Griffin 1940a, p. 185; Whitaker and Rissler 1992a, p. 131; Caceres and Barclay 2000, pp. 2–3). Whitaker and Mumford (2009, p. 210) found that this species flies in and out of some mines and caves in southern Indiana throughout the winter. In particular, the bats were active at Copperhead Cave periodically all winter, with northern long-eared bats being more active than other species (such as little brown bats and tri-colored bats) hibernating in the cave. Though northern long-eared bats fly outside of the hibernacula during the winter, they do not feed; hence the function of this behavior is not well understood (Whitaker and Hamilton 1998, p. 101). It has been suggested, however, that bat activity during winter could be due in part to disturbance by researchers (Whitaker and Mumford 2009, pp. 210–211).

Northern long-eared bats exhibit significant weight loss during hibernation. In southern Illinois, Pearson (1962, p. 30) found an average weight loss of 20 percent during hibernation in male northern long-eared bats, with individuals weighing an average of 6.6 g (0.2 ounces) prior to January 10, and those collected after that date weighing an average of 5.3 g (0.2 ounces). Whitaker and Hamilton (1998, p. 101) reported a weight loss of 41–43 percent over the hibernation period for northern long-eared bats in Indiana. In eastern Missouri, male northern long-eared bats lost an average of 3 g (0.1 ounces), or 36 percent, during the hibernation period (late October through March), and females lost an average of 2.7 g (0.1 ounces), or 31 percent (Caire *et al.* 1979, p. 406).

Migration and Homing

While the northern long-eared bat is not considered a long-distance migratory species, short regional migratory movements between seasonal habitats (summer roosts and winter hibernacula) have been documented between 56 km (35 mi) and 89 km (55 mi) (Nagorsen and Brigham 1993 p. 88; Griffin 1940b, pp. 235, 236; Caire *et al.* 1979, p. 404). Griffin (1940b, pp. 235, 236) reported that a banded male northern long-eared bat had traveled from one hibernaculum in Massachusetts to another in Connecticut over the 2-month period of February to April, a distance of 89 km (55 mi). The spring migration period typically runs from mid-March to mid-May (Caire *et al.* 1979, p. 404; Easterla 1968, p. 770; Whitaker and Mumford 2009, p. 207); fall migration typically occurs between mid-August and mid-October.

Northern long-eared bats have shown a high degree of philopatry (tendency to return to the same location) for a hibernaculum (Pearson 1962), although they may not return to the same hibernaculum in successive seasons (Caceres and Barclay 2000). Banding studies in Ohio, Missouri, and Connecticut show return rates to hibernacula of 5.0 percent (Mills 1971, p. 625), 4.6 percent (Caire *et al.* 1979, p. 404), and 36 percent (Griffin 1940a, p. 185), respectively. An experiment showed an individual bat returned to its home cave up to 32 km (20 mi) away after being removed 3 days prior (Stones and Branick 1969, p. 158).

Reproduction

Mating occurs from late July in northern regions to early October in southern regions and commences when males begin to aggregate around hibernacula and initiate copulation activity (Whitaker and Hamilton 1998, p. 101; Whitaker and Mumford 2009, p. 210; Caceres and Barclay 2000, p. 2; Amelon and Burhans 2006, p. 69). Copulation occasionally occurs again in the spring (Racey 1982, p. 73), and can occur during the winter as well (Kurta 2014, in litt.). Hibernating females store sperm until spring, exhibiting delayed fertilization (Racey 1979, p. 392; Caceres and Pybus 1997, p. 4). Ovulation takes place near the time of emergence from hibernation, followed by fertilization of a single egg, resulting in a single embryo (Cope and Humphrey 1972, p. 9; Caceres and Pybus 1997, p. 4; Caceres and Barclay 2000, p. 2); gestation is approximately 60 days, based on like species (Kurta 1995, p. 71). Males are generally reproductively inactive from April until late July, with testes enlarging in preparation for breeding in most males during August and September (Caire *et al.* 1979, p. 407; Amelon and Burhans 2006, p. 69; Kurta 2013, in litt.).

Maternity colonies, consisting of females and young, are generally small, numbering from about 30 (Whitaker and Mumford 2009, p. 212) to 60 individuals (Caceres and Barclay 2000, p. 3); however, one group of 100 adult females was observed in Vermilion County, Indiana (Whitaker and Mumford 2009, p. 212). In West Virginia, maternity colonies in two studies had a range of 7 to 88 individuals (Owen *et al.* 2002, p. 2) and 11 to 65 individuals, with a mean size of 31 (Menzel *et al.* 2002, p. 110). Lacki and Schwierjohann (2001, p. 485) found that the number of bats within a given roost declined as the summer progressed. Pregnant females formed the largest aggregations (mean=26) and post-lactating females formed the smallest aggregation (mean=4). The largest overall reported colony size of 65 bats. Other studies have also found that the number of individuals roosting together in a given roost typically decreases from pregnancy to post-lactation (Foster and Kurta 1999, p. 667; Lacki and Schwierjohann 2001, p. 485; Garroway and Broders 2007, p. 962; Perry and Thill 2007, p. 224; Johnson *et al.* 2012, p. 227). Female roost site selection, in terms of canopy cover and tree height, changes depending on reproductive stage; relative to pre- and post-lactation periods, lactating northern long-eared bats have been shown to roost higher in tall trees situated in areas of relatively less canopy cover and lower tree density (Garroway and Broders 2008, p. 91).

Adult females give birth to a single pup (Barbour and Davis 1969, p. 104). Birthing within the colony tends to be synchronous, with the majority of births occurring around the same time (Krochmal and Sparks 2007, p. 654). Parturition (birth) likely occurs in late May or early June (Caire *et al.* 1979, p. 406; Easterla 1968, p. 770; Whitaker and Mumford 2009, p. 213), but may occur as late as July (Whitaker and Mumford 2009, p. 213). Broders *et al.* (2006, p. 1177) estimated a parturition date of July 20 in New Brunswick. Lactating and post-lactating females were observed in mid-June in Missouri (Caire *et al.* 1979, p. 407), July in New Hampshire and Indiana (Sasse and Pekins 1996, p. 95; Whitaker and Mumford 2009, p. 213), and August in Nebraska (Benedict 2004, p. 235). Juvenile volancy (flight) often occurs by 21 days after birth (Krochmal and Sparks 2007, p. 651, Kunz 1971, p. 480) and has been documented as early as 18 days after birth (Krochmal and Sparks 2007, p. 651). Subadults were captured in late June in Missouri (Caire *et al.* 1979, p. 407), early July in Iowa (Sasse and Pekins 1996, p. 95), and early August in Ohio (Mills 1971, p. 625).

Maximum lifespan for northern long-eared bats is estimated to be up to 18.5 years (Hall *et al.* 1957, p. 407). Most mortality for northern long-eared bats and many other species of bats occurs during the juvenile stage (Caceres and Pybus 1997, p. 4).

Foraging Behavior

Northern long-eared bats are nocturnal foragers and use hawking (catching insects in flight) and gleaning (picking insects from surfaces) behaviors in conjunction with passive acoustic cues (Nagorsen and Brigham 1993, p. 88; Ratcliffe and Dawson 2003, p. 851). Observations of northern long-eared bats foraging on arachnids (spiders) (Feldhamer *et al.* 2009, p. 49), presence of green plant material in their feces (Griffith and Gates 1985, p. 456), and non-flying prey in their stomach contents (Brack and Whitaker 2001, p. 207) suggest considerable gleaning behavior. The northern long-eared bat has a diverse diet including moths, flies, leafhoppers, caddisflies, and beetles (Nagorsen and Brigham 1993, p. 88; Brack and Whitaker 2001, p. 207; Griffith and Gates 1985, p. 452), with diet composition differing geographically and seasonally (Brack and Whitaker 2001, p. 208). Feldhamer *et al.* (2009, p. 49) noted close similarities of all *Myotis* diets in southern Illinois, while Griffith and Gates (1985, p. 454) found significant differences between the diets of northern long-eared bats and little brown bats. The most common insects found in the diets of northern long-eared bats are lepidopterans (moths) and coleopterans (beetles) (Brack and Whitaker 2001, p. 207; Lee and McCracken 2004, pp. 595–596; Feldhamer *et al.* 2009, p. 45; Dodd *et al.* 2012, p. 1122), with arachnids also being a common prey item (Feldhamer *et al.* 2009, p. 45). Northern long-eared bats have the highest frequency call of any bat species in the Great Lakes area (Kurta 1995, p. 71). Gleaning allows this species to gain a foraging advantage for preying on moths because moths are less able to detect these high frequency echolocation calls (Faure *et al.* 1993, p. 185).

Most foraging occurs above the understory, 1 to 3 m (3 to 10 ft) above the ground, but under the canopy (Nagorsen and Brigham 1993, p. 88) on forested hillsides and ridges, rather than along riparian areas (Brack and Whitaker 2001, p. 207; LaVal *et al.* 1977, p. 594). This coincides with data indicating that mature forests are an important habitat type for foraging northern long-eared bats (Caceres and Pybus 1997, p. 2). Occasional foraging also takes place over small forest clearings and water, and along roads (van Zyll de Jong 1985, p. 94). Foraging patterns indicate a peak activity period within 5 hours after sunset followed by a secondary peak within 8 hours after sunset (Kunz 1973, pp. 18–19). Brack and Whitaker (2001, p. 207) did not find significant differences in the overall diet of northern long-eared bats between morning (3 a.m. to dawn) and evening (dusk to midnight) feedings; however there were some differences in the consumption of particular prey orders between morning and evening feedings. Additionally, no significant differences existed in dietary diversity values between age classes or sex groups (Brack and Whitaker 2001, p. 208).

Home Range

Northern long-eared bats exhibit site fidelity to their summer home range (Perry 2011, pp. 113–114; Johnson *et al.* 2009a, p. 237; Jackson 2004, p. 87; Foster and Kurta 1999, p. 665). During this period, northern long-eared bats roost (Sasse and Pekins 1996, pp. 95–96; Owen *et al.* 2002, p. 1; Perry and Thill 2007, pp. 224–225; Timpone *et al.* 2010, p. 116) and forage (Owen *et al.* 2003, pp. 354–355; Sheets 2010, pp. 3–4, 18; Tichenell *et al.* 2011, p. 985; Dodd *et al.* 2012, p. 1120) in forests. Their home ranges, which include both the foraging and roosting areas, may vary by sex. Broders *et al.* (2006, p. 1117) found home ranges of females (mean of 8.6 ha (21.3 acres)) to be larger than males (mean of 1.4 ha (3.5 acres)), though Lereculeur (2013, p. 20) found no difference between sexes at a study site in Tennessee. Also, Broders *et al.* (2006, p. 1117) and Henderson and Broders (2008, p. 958) found foraging areas (of either sex) to be six or more times larger than roosting areas. At sites in the Red River Gorge area of the Daniel Boone National Forest, Lacki *et al.* (2009, p. 1169) found female home range size to range from 19 to 172 ha (47 to 425 acres). Owen *et al.* (2003, p. 353) estimated average maternal home range size to be 65 ha (161 acres). Home range size of northern long-eared bats in this study site was small relative to other bat species, but this may be due to the study's timing (during the maternity period) and the small body size of northern long-eared bats (Owen *et al.* 2003, pp. 354–355). The mean distance between roost trees and foraging areas of radio-tagged individuals in New Hampshire was 602 m (1,975 ft) with a range of 60 to 1,719 m (197 to 5,640 ft) (Sasse and Pekins 1996, p. 95). Work on Prince Edward Island by Henderson and

Broders (2008, p. 956) found female northern long-eared bats traveling approximately 1,100 m (3,609 ft) between roosting and foraging areas.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the northern long-eared bat. There are several factors presented below that affect the northern long-eared bat to a greater or lesser degree; however, we have found that no other threat is as severe and immediate to the northern long-eared bat's persistence as the disease, white-nose syndrome (WNS), discussed below under Factor C. WNS is currently the predominant threat to the species, and if WNS had not emerged or was not affecting the northern long-eared bat populations to the level that it has, we presume the species' would not be experiencing the dramatic declines that it has since WNS emerged. Therefore, although we have included brief discussions of other factors affecting the species, the focus of the discussion below is on WNS.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Hibernation Habitat

Modifications to bat hibernacula, by erecting physical barriers (*e.g.,* doors, gates), to control cave and mine access can affect the microclimate of the subterranean habitat, and thus the ability of the cave or mine to support hibernating bats, including the northern long-eared bat. These well-documented effects on cave-hibernating bat species were discussed in the Service's Indiana Bat Draft Recovery Plan (Service 2007, pp. 71–74). Anthropogenic modifications to cave and mine entrances, such as the addition of restrictive gates or other structures intended to exclude humans, may not only alter flight characteristics and access (Spanjer and Fenton 2005, p. 1110), but may change airflow and alter internal microclimates of the caves and mines, eliminating their utility as hibernacula (Service 2007, p. 71). For example, Richter *et al.* (1993, p. 409) attributed the decline in the number of Indiana bats at Wyandotte Cave, Indiana (which harbors one of the largest known population of hibernating Indiana bats), to an increase in the cave's temperature resulting from restricted airflow caused by a stone wall erected at the cave's entrance. After the wall was removed, the number of Indiana bats increased markedly over the next 14 years (Richter *et al.* 1993, p. 412; Brack *et al.* 2003, p. 67). Similarly, northern long-eared bats were likely negatively impacted when the entrance to John Friend Cave in Maryland was filled with large rocks in 1981, which closed the only known access to the cave (Gates *et al.* 1984, p. 166). We conclude, based on the need for specific hibernation requirements of any cave-hibernating bat, that alteration of hibernacula could result in adverse impacts to individual northern long-eared bats.

In addition to the direct access modifications to caves discussed above, debris buildup at entrances or on cave gates can also significantly modify the cave or mine site characteristics by restricting airflow and the course of natural water flow. Water flow restriction could lead to flooding, thus drowning hibernating bats (Amelon and Burhans 2006, p. 72). For example, in Minnesota, 5 of the 11 known northern long-eared bat hibernacula are subject to flooding, presenting a threat to hibernating bats (Nordquist 2012, pers. comm.). Flooding has been noted in hibernacula in other States within the range of the northern long-eared bat, but to a lesser degree. Although modifications to hibernacula can lead to mortality of northern long-eared bats, we do not conclude it has resulted in population-level effects.

Mining operations, mine passage collapse (subsidence), and mine reclamation activities can also affect bats and their hibernacula. Internal and external collapse of abandoned coal mines was identified as one of the primary threats to northern long-eared bat hibernacula at sites located within the New River Gorge National River and Gauley River National Recreation Area in West Virginia (Graham 2011, unpublished data). In States surveyed for effects to northern long-eared bats by hibernacula collapse, responses varied, with the following number of hibernacula in each State reported (not all States surveyed responded) as susceptible to collapse: 1 (of 7) in Maryland, 3 (of 11) in Minnesota, 1 (of 5) in New Hampshire, 4 (of 15) in North Carolina, 1 (of 2) in South Carolina, and 1 (of 13) in Vermont (Service 2011, unpublished data). Previous and current mining operations pose a direct threat to northern long-eared bat from mine collapse in parts of its range.

Before Federal and State cave protection laws were put in place, there were several reported instances where mines were closed while bats were hibernating, thereby entombing entire colonies (Tuttle and Taylor 1998, p. 8). For the northern long-eared bat, loss of potential winter habitat through mine closures has been noted as a concern in Virginia, although visual inspections of openings are typically conducted to determine whether gating is warranted (Reynolds 2011, unpublished data). In Nebraska, closing quarries, and specifically sealing quarries in Cass and Sapry Counties, is considered a potential threat to northern long-eared bats (Geluso 2011, unpublished data).

In general, threats to the integrity of bat hibernacula have decreased since the Indiana bat was listed as endangered in 1967, and since the implementation of Federal and State cave protection laws and abandoned mine reclamation programs. Increasing awareness about the importance of cave and mine microclimates to hibernating bats and regulation under the Act have helped to alleviate the destruction or modification of hibernation habitat, at least where the Indiana bat and gray bat (*Myotis grisescens*) are present (Service 2007, p. 74). The northern long-eared bat has likely benefited from the protections given to the Indiana bat and the gray bat and their winter habitat, in areas where its range overlaps with those species' ranges.

Disturbance of Hibernating Bats

Human disturbance of hibernating bats has long been considered a threat to cave-hibernating bat species like the northern long-eared bat, and is discussed in detail in the Service's Indiana Bat Draft Recovery Plan (Service 2007, pp. 80–85). The primary forms of human disturbance to hibernating bats results from cave commercialization (cave tours and other commercial uses of caves), recreational caving, vandalism, and research-related activities (Service 2007, p. 80). Arousal during hibernation causes the greatest amount of energy depletion in

hibernating bats (Thomas *et al.* 1990, p. 477). Human disturbance at hibernacula, specifically non-tactile disturbance such as changes in light and sound, can cause bats to arouse more frequently, causing premature energy store depletion and starvation, as well as increased tactile disturbance amongst bats (Thomas 1995, p. 944; Speakman *et al.* 1991, p. 1103), leading to marked reductions in bat populations (Tuttle 1979, p. 3). Prior to the outbreak of WNS, Amelon and Burhans (2006, p. 73) indicated that ''the widespread recreational use of caves and indirect or direct disturbance by humans during the hibernation period pose the greatest known threat to this species (northern long-eared bat).'' Olson *et al.* (2011, p. 228), hypothesized that an increase in the hibernating bat population (including northern long-eared bats) was related to decreased visits by recreational users and researchers at Cadomin Cave in Alberta, Canada. Bilecki (2003, p. 55) states that the reduction of four species of bats, including the northern long-eared bat, was ''directly related to high human use and abuse'' of a cave. Disturbance during hibernation could cause movements within or between caves (Beer 1955, p. 244).

Of 14 States that assessed the possibility of human disturbance at bat hibernacula within the range of the northern long-eared bat, 13 identified at least 1 known hibernacula as potentially impacted by human disturbance (Service 2012, unpublished data). Eight of these 14 States (Arkansas, Kentucky, Maine, Minnesota, New Hampshire, North Carolina, South Carolina, and Vermont) indicated the potential for human disturbance at over 50 percent of the known hibernacula in that State. Nearly all States without WNS identified human disturbance as the primary threat to hibernating bats, and all others (including WNS-positive States) noted human disturbance as the next greatest threat after WNS or of significant concern (Service 2012, unpublished data).

The threat of commercial use of caves and mines during the hibernation period has decreased at many sites known to harbor Indiana bats, and we conclude that this also applies to northern long-eared bats. However, effects from recreational caving are more difficult to assess. In addition to unintended effects of commercial and recreational caving, intentional killing of bats in caves by shooting, burning, and clubbing has been documented (Tuttle 1979, pp. 4, 8). Intentional killing of northern long-eared bats has been documented at a small percentage of hibernacula (*e.g.,* one case of shooting disturbance in Maryland and one case of bat torching in Massachusetts where approximately 100 bats (northern long-eared bats and other species) were killed) (Service, unpublished data), but we do not have evidence that this is happening on a large enough scale to have population-level effects.

In summary, while there are isolated incidents of previous disturbance to northern long-eared bats from both intentional disturbance and recreational use of caves and mines, we conclude that there is no evidence suggesting that this threat in itself has led to population-level declines.

Summer Habitat

As discussed in detail in the Background (*Biology,* ''I. Summer Roost Characteristics'') section, above, northern long-eared bats require forest for roosting, raising young, foraging, and commuting between roosting and foraging habitat. Northern long-eared bats will also roost in manmade structures, to a lesser extent. The two common causes of loss or modification of habitat are conversion of forest for other land use and forest modification.

I. Forest Conversion

Forest conversion is the loss of forest to another land cover type (*e.g.,* grassland, cropland, development) and may result in: Loss of suitable roosting or foraging habitat; fragmentation of remaining forest patches, leading to longer flights between suitable roosting and foraging habitat; removal of (fragmenting colonies/networks) travel corridors; and direct injury or mortality (during active season clearing). While forest conversion may occur throughout all States within the species' range, impacts to the northern long-eared bat and their habitat typically occur at a more local-scale *(i.e.,* individuals and potentially colonies).

The USFS (2014, p. 7) summarized U.S. forest trends and found a decline from 1850 to the early 1900s, and a general leveling off since that time; therefore, conversion from forest to other land cover types has been fairly stable with conversion to forest (cropland reversion/plantings). For example, according to the U.S. Forest Service's Forest Inventory and Analysis, the amount of forested land within the 37 States and the District of Columbia of the northern long-eared bat's range increased from 414,297,531 acres in 2004 and 2005, to 423,585,498 acres in 2013 (Association of Fish and Wildlife Agencies 2014, in litt; Miles 2014, *http://apps.fs.fed.us/Evalidator/evalidator.jsp*). However, between 2001 and 2006, there was a net loss of 1.2 percent of forest across the United States with most losses in the Southeast and West, and a net loss of interior forest (a forest parcel embedded in a 40-acre landscape that has at least 90 percent forest land cover) of 4.3 percent (USFS 2014, p. 18) throughout the continental United States, which increased forest fragmentation and smaller remaining forest patches. There is some evidence that northern long-eared bats have an affinity for less fragmented habitat (interior forest) (Broders *et al.* 2006, p. 1181; Henderson *et al.* 2008, p. 1825). Also, forest ownership varies widely across the species' range in the United States. Private lands may carry with them a higher risk for conversion than do public forests, a factor that must be considered when assessing risk of forest conversion now and in the future. Private land ownership is approximately 81 percent in the East and 30 percent in the West (USFS 2014, p. 15).

Some of the highest rates of development in the conterminous United States are occurring within the range of the northern long-eared bat (Brown *et al.* 2005, p. 1856), and contribute to loss of forest habitat. The 2010 Resources Planning Act (RPA) Assessment (USFS 2012) summarized findings about the status, trends, and projected future of U.S. forests. This assessment was influenced by a set of scenarios with varying assumptions with regard to global and U.S. population, economic growth, climate change, wood energy consumption, and land use change from 2010 to 2060. It projects forest losses of 6.5–13.8 million ha (16–34 million acres or 4–8 percent of 2007 forest area) across the conterminous United States, and forest loss is expected to be concentrated in the southern United States, with losses of 3.6–8.5 million ha (9–21 million acres) (USFS 2012, p. 12).

Wind energy development continues to increase throughout the northern long-eared bat's range. Iowa, Illinois, Oklahoma, Minnesota, Kansas, and New York are amongst the top 10 States for wind energy capacity (installed projects) in the United States (American Wind Energy Association (AWEA) 2013, unpaginated). If projects are sited in forested habitats, effects from wind energy development may include tree-clearings associated with turbine placement, road construction, turbine lay-down areas, transmission lines, and substations. See *Factor E. Other*

Natural or Manmade Factors Affecting Its Continued Existence for a Discussion on Effects to Bats From the Operation of Wind Turbines

Surface coal mining is common in the central Appalachian region, which includes portions of Pennsylvania, West Virginia, Virginia, Kentucky, Ohio, and Tennessee, and is one of the major drivers of land cover change in the region (Sayler 2008, unpaginated). Surface coal mining may also destroy forest habitat in parts of the Illinois Basin in southwest Indiana, western Kentucky, and Illinois (King 2013, pers. comm.).

Natural gas extraction is expanding across the United States, particularly throughout the range of the northern long-eared bat. Natural gas extraction involves fracturing rock formations using highly pressurized water and other various chemicals (Hein 2012, p. 1). Natural gas extraction and transmission, particularly across the Marcellus Shale region, which includes large portions of New York, Pennsylvania, Ohio, and West Virginia, is expected to expand over the coming years. In Pennsylvania, for example, nearly 2,000 Marcellus natural gas wells have already been drilled or permitted, and if development trends continue, as many as 60,000 more could be built by 2030 (Johnson 2010, pp. 8, 13). Habitat necessary for establishing maternity colonies and foraging may be lost and degraded due to the practice of forest clearing for well pads and associated infrastructures (*e.g.,* roads, pipelines, and water impoundments). These actions could decrease the amount of suitable interior forest habitat available to northern long-eared bats.

There are a variety of reasons forests are being converted (*e.g.,* urban development, energy production, and transmission) within the range of the northern long-eared bat. Impacts to northern long-eared bats from loss of forest vary depending on the timing, location, and extent of the removal. While bats can sometimes flee during tree removal, removal of occupied roosts (during spring through fall) is likely to result in direct injury or mortality to some northern long-eared bats. This is particularly likely during cool spring months (when bats enter torpor) and if flightless pups or inexperienced flying juveniles are also present. Removal of forest outside of northern long-eared bat summer home range, or away from hibernacula, would not likely directly impact the species. However, removal of forest within a summer home range (regardless of when it is removed) may negatively impact the species, depending on the extent of removal and the amount of remaining suitable roosting and foraging habitat.

Some portions of the northern long-eared bat's range are more forested than others. In areas with little forest or highly fragmented forests (*e.g.,* western U.S. edge of the range, central Midwestern states; see Figure 1, above), impact of forest loss would be disproportionately greater than similar-sized losses in heavily forested areas (*e.g.,* Appalachians and northern forests). Also, the impact of habitat loss within a northern long-eared bat's home range is expected to vary depending on the scope of removal. Northern long-eared bats are flexible in which tree species they select as roosts, and roost trees are an ephemeral resource; therefore, the species likely can tolerate some loss of roosts, provided suitable alternative roosts are available. Silvis *et al.* (2014, pp. 283–290) modeled roost loss of northern long-eared bats, and Silvis *et al.* (2015, pp. 1–17) removed known northern long-eared bat roosts during the winter in the field to determine how this would impact the species. Once removals totaled 20–30 percent of known roosts, a single maternity colony network started showing patterns of break-up. Sociality is hypothesized to increase reproductive success (Silvis *et al.* 2014, p. 283), and smaller colonies would be expected to have reduced reproductive success.

Longer flights to find alternative suitable habitat and colonial disruption may result from removal of roosting or foraging habitat. Northern long-eared bats emerge from hibernation with their lowest annual fat reserves, and return to their summer home ranges. Because northern long-eared bats have summer home range fidelity (Foster and Kurta 1999, p. 665; Patriquin *et al.* 2010, p. 908; Broders *et al.* 2013, p. 1180), loss or alteration of forest habitat may put additional stress on females when returning to summer roost or foraging areas after hibernation. Females (often pregnant) have limited energy reserves available for use if forced to seek out new roosts or foraging areas. Hibernation and reproduction are the most energetically demanding periods for temperate-zone bats, including the northern long-eared bat (Broders *et al.* 2013, p. 1174). Bats may reduce metabolic costs of foraging by concentrating efforts in areas of known high prey profitability, a benefit that could result from the bat's local roosting and home range knowledge and site fidelity (Broders *et al.* 2013, p. 1181). Cool spring temperatures provide an additional energetic demand, as bats need to stay sufficiently warm or enter torpor. Entering torpor comes at a cost of delayed parturition; bats born earlier in the year have a greater chance of surviving their first winter and breeding in their first year of life (Frick *et al.* 2010b, p. 133). Delayed parturition may also be costly because young of the year and adult females would have less time to prepare for hibernation (Broders *et al.* 2013, p. 1180). Female northern long-eared bats typically roost colonially, with their largest population counts occurring in the spring (Foster and Kurta 1999, p. 667), presumably as one way to reduce thermal costs for individual bats (Foster and Kurta 1999, p. 667). Therefore, similar to other temperate bats, northern long-eared bats have multiple high metabolic demands (particularly in spring), and must have sufficient suitable roosting and foraging habitat available in relatively close proximity to allow for successful reproduction.

In summary, U.S. forest area trends have remained relatively stable with some geographic regions facing more conversion than others in the recent past. In the future, forest conversion is expected to increase, whether from commercial or residential development, energy production, or other pressures on forest lands. While monitoring efforts for impacts to northern long-eared bats from forest conversion did not often occur in the past, we expect that impacts likely occurred, but the species appears to have been resilient to these impacts prior to the emergence of WNS. In areas where WNS is present, there are additional energetic demands for northern long-eared bats. For example, WNS-affected bats have less fat reserves than non-WNS-affected bats when they emerge from hibernation (Reeder *et al.* 2012, p. 8; Warnecke *et al.* 2012, p. 7001) and have wing damage (Meteyer *et al.* 2009, p. 412; Reichard and Kunz 2009, p. 458) that makes migration and foraging more challenging. Females that survive the migration to their summer habitat must partition energy resources between foraging, keeping warm, successful pregnancy and pup-rearing, and healing. Current and future forest conversion may have negative additive impacts where the species has been impacted by WNS. Impacts from forest conversion to individuals or colonies would be expected to range from indirect impact (*e.g.,* minor amounts of forest removal in areas outside northern long-eared bat summer home ranges or away from hibernacula) to minor (*e.g.,* largely forested areas, areas with robust northern long-eared bat populations) to significant (*e.g.,* removal of a large percentage of summer home range,

highly fragmented landscapes, areas with WNS impacts).

II. Forest Management

Unlike forest conversion, forest management maintains forest habitat on the landscape, and the impacts from management activities are for the most part considered temporary in nature. Forest management includes multiple practices, and this section specifically addresses timber harvest. Timber harvesting includes a wide variety of practices from selected harvest of individual trees to clearcutting. Impacts from forest management would be expected to range from positive (*e.g.,* maintaining or increasing suitable roosting and foraging habitat within northern long-eared bat home ranges) to neutral (*e.g.,* minor amounts forest removal, areas outside northern long-eared bat summer home ranges or away from hibernacula) to negative (*e.g.,* death of adult females or pups or both).

The best available data indicate that the northern long-eared bat shows a varied degree of sensitivity to timber harvesting practices. For example, Menzel *et al.* (2002, p. 112) found northern long-eared bats roosting in intensively managed stands in West Virginia; indicating that there were sufficient suitable roosts (primarily snags) remaining for their use. At the same study site, Owen *et al.* (2002, p. 4) concluded that northern long-eared bats roosted in areas with abundant snags, and that in intensively managed forests in the central Appalachians, roost availability was not a limiting factor. Northern long-eared bats often chose black locust and black cherry as roost trees, which were quite abundant and often regenerate quickly after disturbance (*e.g.,* timber harvest). Similarly, Perry and Thill (2007, p. 222) tracked northern long-eared bats in central Arkansas and found roosts were located in eight forest classes with 89 percent in three classes of mixed pine-hardwood forest. The three classes of mixed pine-hardwood forest that supported the majority of the roosts were partially harvested or thinned, unharvested (50–99 years old), and group selection harvest (Perry and Thill 2007, pp. 223–224).

Certain levels of timber harvest may result in canopy openings, which could result in more rapid development of bat young. In central Arkansas, Perry and Thill (2007, pp. 223–224) found female bat roosts were more often located in areas with partial harvesting than males, with more male roosts (42 percent) in unharvested stands than female roosts (24 percent). They postulated that females roosted in relatively more open forest conditions because they may receive greater solar radiation, which may increase developmental rates of young or permit young bats a greater opportunity to conduct successful initial flights (Perry and Thill 2007, p. 224). Cryan *et al.* (2001, p. 49) found several reproductive and nonreproductive female northern long-eared bat roost areas in recently harvested (less than 5 years) stands in the Black Hills of South Dakota in which snags and small stems (dbh of 2 to 6 inches (5 to 15 cm)) were the only trees left standing; however, the largest colony (n = 41) was found in a mature forest stand that had not been harvested in more than 50 years.

Forest size and continuity are also factors that define the quality of habitat for roost sites for northern long-eared bats. Lacki and Schwierjohann (2001, p. 487) stated that silvicultural practices could meet both male and female roosting requirements by maintaining large-diameter snags, while allowing for regeneration of forests. Henderson *et al.* (2008, p. 1825) also found that forest fragmentation effects northern long-eared bats at different scales based on sex; females require a larger unfragmented area with a large number of suitable roost trees to support a colony, whereas males are able to use smaller, more fragmented areas. Henderson and Broders (2008, pp. 959–960) examined how female northern long-eared bats use the forest-agricultural landscape on Prince Edward Island, Canada, and found that bats were limited in their mobility and activities are constrained when suitable forest is limited. However, they also found that bats in a relatively fragmented area used a building for colony roosting, which suggests an alternative for a colony to persist in an area with fewer available roost trees.

In addition to impacts on roost sites, we consider effects of forest management practices on foraging and traveling behaviors of northern long-eared bats. In southeastern Missouri, the northern long-eared bat showed a preference for contiguous tracts of forest cover (rather than fragmented or wide open landscapes) for foraging or traveling, and different forest types interspersed on the landscape increased likelihood of occupancy (Yates and Muzika 2006, p. 1245). Similarly, in West Virginia, female northern long-eared bats spent most of their time foraging or travelling in intact forest, diameter-limit harvests (70–90 year-old stands with 30–40 percent of basal area removed in the past 10 years), and road corridors, with no use of deferment harvests (similar to clearcutting) (Owen *et al.* 2003, p. 355). When comparing use and availability of habitats, northern long-eared bats preferred diameter-limit harvests and forest roads. In Alberta, Canada, northern long-eared bats avoided the center of clearcuts and foraged more in intact forest than expected (Patriquin and Barclay 2003, p. 654). On Prince Edward Island, Canada, female northern long-eared bats preferred open areas less than forested areas, with foraging areas centered along forest-covered creeks (Henderson and Broders 2008, pp. 956–958). In mature forests in South Carolina, 10 of the 11 stands in which northern long-eared bats were detected were mature stands (Loeb and O'Keefe 2006, p. 1215). Within those mature stands, northern long-eared bats were more likely to be recorded at points with sparse or medium vegetation rather than points with dense vegetation, suggesting that some natural gaps within mature forests can provide good foraging habitat for northern long-eared bats (Loeb and O'Keefe 2006, pp. 1215–1217). However, in southwestern North Carolina, Loeb and O'Keefe (2011, p. 175) found that northern long-eared bats rarely used forest openings, but often used roads. Forest trails and roads may provide small gaps for foraging and cover from predators (Loeb and O'Keefe 2011, p. 175). In general, northern long-eared bats prefer intact mixed-type forests with small gaps (*i.e.,* forest trails, small roads, or forest-covered creeks) in forest with sparse or medium vegetation for forage and travel rather than fragmented habitat or areas that have been clearcut.

Impacts to northern long-eared bats from forest management would be expected to vary depending on the timing of removal, location (within or outside northern long-eared bat home range), and extent of removal. While bats can flee during tree removal, removal of occupied roosts (during spring through fall) is likely to result in direct injury or mortality to some percentage of northern long-eared bats. This percentage would be expected to be greater if flightless pups or inexperienced flying juveniles were also present. Forest management outside of northern long-eared bat summer home ranges or away from hibernacula would not be expected to result in impacts to this species. However, forest management within a summer home range (regardless of when it is removed) may result in impacts to this species, depending on the extent of removal and amount of remaining suitable roosting and foraging habitat.

Unlike forest conversion, forest management is not usually expected to

result in a permanent loss of suitable roosting or foraging habitat for northern long-eared bats. On the contrary, forest management is expected to maintain a forest over the long term for the species. However, localized long-term reductions in suitable roosting and/or foraging habitat can occur from various forest practices (*e.g.,* clearcuts). As stated above, northern long-eared bats have been found in forests that have been managed to varying degrees, and as long as there is sufficient suitable roosting and foraging habitat within their home range and travel corridors between those areas, we would expect northern long-eared bat colonies to continue to occur in managed landscapes. However, in areas with WNS, we believe northern long-eared bats are likely less resilient to stressors and maternity colonies are smaller. Given the low inherent reproductive potential of northern long-eared bats (max of one pup per female), death of adult females or pups or both during tree felling reduces the long-term viability of those colonies.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

Although there are various forms of habitat destruction and disturbance that present potential adverse effects to the northern long-eared bat, they are not considered the predominant threat to the species. Even if all habitat-related stressors were eliminated or minimized, the significant effects of WNS on the northern long-eared bat would remain. Therefore, below we present a few examples, but not a comprehensive list, of conservation efforts that have been undertaken to lessen effects from habitat destruction or disturbance to the northern long-eared bat.

Direct protection of caves and mines can be accomplished through installation of bat-friendly gates that allow passage of bats while reducing disturbance from human entry as well as changes to the cave microclimate from air restrictions. One of the threats to bats in Michigan is the closure of unsafe mines in such a way that bats are trapped within or excluded; however, there have been efforts by the Michigan Department of Natural Resources and others to work with landowners who have open mines to encourage them to install bat-friendly gates to close mines to humans, but allow access to bats (Hoving 2011, unpublished data). The NPS has proactively taken steps to minimize effects to underground bat habitat resulting from vandalism, recreational activities, and abandoned mine closures (Plumb and Budde 2011, unpublished data). In addition, the NPS is properly gating abandoned coal mine entrances, using a ''bat-friendly'' design, as funding permits (Graham 2011, unpublished data). All known hibernacula within national grasslands and forestlands of the Rocky Mountain Region of the USFS are closed during the winter hibernation period, primarily due to the threat of WNS, although this will reduce disturbance to bats in general inhabiting these hibernacula (USFS 2013, unpaginated). Because of concern over the importance of bat roosts, including hibernacula, the American Society of Mammalogists developed guidelines for protection of roosts, many of which have been adopted by government agencies and special interest groups (Sheffield *et al.* 1992, p. 707).

Many States are also taking a proactive stance to conserve and restore forest and riparian habitats with specific focus on maintaining forest patches and connectivity. For example, Montana is developing best management practices for riparian habitat protection. Other States have established habitat protection buffers around known Indiana bat hibernacula that will also serve to benefit northern long-eared bat by maintaining sufficient quality and quantity of swarming habitat. Some States have also limited tree-clearing activities to the winter, as a measure that would protect maternity colonies and non-volant pups during summer months. Many States are undertaking research and monitoring efforts to gain more information about habitat needs of and use by northern long-eared bat.

Summary of the Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

We have identified several potential threats to the northern long-eared bat due to impacts to their winter and summer habitats. Winter habitat may be impacted by both human and non-human modification of hibernacula, particularly damaging is the altering or closing of hibernacula entrances. These modifications can lead to a partial or complete loss of utility as hibernacula. Humans can also disturb hibernating bats, either directly or indirectly, potentially resulting in an increase in energy consuming arousal bouts during hibernation (Thomas 1995, pp. 940–945; Johnson *et al.* 1998, pp. 255–260). Human disturbance at hibernacula has been identified by many States as the next greatest threat after WNS.

During the summer, northern long-eared bat habitat loss is primarily due to forest conversion and forest management. Throughout the range of northern long-eared bats, forest conversion is expected to increase due to commercial and urban development, energy production and transmission, and natural changes. Forest conversion can result in a myriad of effects to the species, including direct loss of habitat, fragmentation of remaining habitat, and direct injury or mortality. Forest management activities, unlike forest conversion, typically result in temporary (non-permanent) impacts to northern long-eared bat summer habitat. The impact of management activities may be positive, neutral, or negative to the northern long-eared bat depending on scale, the management practice, and timing. However, these potential impacts can be greatly reduced with the use of measures that avoid or minimize effects to bats and their habitat. Potential benefits to the species from forest management practices include keeping forest on the landscape and creation and management of roosting and foraging habitat (from some forest management practices).

Many activities continue to pose a threat to the summer and winter habitats of northern long-eared bats. While, these activities alone were unlikely to have significant, population-level effects, there is now likely a cumulative effect on the species in portions of range that have been impacted by WNS. Also, there have been numerous conservation efforts directed at lessening the effects of habitat destruction or disturbance on the species, including cross-State and cross-agency collaboration on habitat restoration and hibernacula protection.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There are very few records of the northern long-eared bat being collected specifically for commercial, recreational, scientific, or educational purposes, and thus we do not consider such collection activities to pose a threat to the species. Disturbance of hibernating bats as a result of recreational use and scientific research activities in hibernacula is discussed under Factor A.

Factor C. Disease or Predation

Disease

I. White-Nose Syndrome

White-nose syndrome (WNS) is an emerging infectious wildlife disease that poses a considerable threat to hibernating bat species throughout North America (Service 2011, p. 1). WNS is responsible for unprecedented mortality of insectivorous bats in

eastern North America (Blehert *et al.* 2009, p. 227; Turner *et al.* 2011, pp. 13, 22). The first evidence of the disease (a photo of bats with fungus) was documented at Howes Cave in Schoharie County, New York, 32 mi (52 km) west of Albany, on February 16, 2006, but WNS was not actually discovered until January 2007, when it was found at four additional caves around Schoharie County (Blehert *et al.* 2009, p. 227). Since that time, WNS has spread rapidly throughout the Northeast, Southeast, Midwest, and eastern Canada. As of February 2015, WNS has been confirmed (meaning one or more bats in the State have been analyzed and confirmed with the disease) in 25 States (Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin) and 5 Canadian provinces (New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec). Although WNS has not been confirmed in Rhode Island (2 known hibernacula) or the District of Columbia (no known hibernacula), their size and proximity to heavily impacted WNS-confirmed States make it reasonable to conclude that bat populations are also affected by WNS there. Three additional States (Iowa, Minnesota, and Mississippi) are considered suspect for WNS based on the detection of the causative fungus, Pd (Lorch *et al.* 2011, pp. 376–379; Muller *et al.* 2013, pp. 253–259), on bats within those States, but no mortality or other signs of the disease have been documented at those locations as of December 2014. Evidence suggestive of the presence of Pd on one bat in Oklahoma was recently reassessed, and it was concluded that those initial findings are no longer supported (United States Geologic Survey (USGS) 2014, p. 1). Therefore, Oklahoma is no longer considered a suspect (meaning Pd confirmed) State for WNS. Table 1 (below) provides a summary of the States in which WNS is currently present.

State or district	WNS present?	First winter WNS confirmed	Documented WNS mortality in bats
Alabama	Yes	2011–2012	Yes.
Arkansas	Yes	2013–2014	Yes.
Connecticut	Yes	2007–2008	Yes.
District of Columbia	Unknown.		
Delaware	Yes	2011–2012	Yes.
Georgia	Yes	2012–2013	Yes.
Illinois	Yes	2012–2013	Yes.
Indiana	Yes	2010–2011	Yes.
Iowa	Pd	Pd only (2011–2012)	No.
Kansas	No.		
Kentucky	Yes	2010–2011	Yes.
Louisiana	No.		
Maine	Yes	2010–2011	Yes.
Maryland	Yes	2009–2010	Yes.
Massachusetts	Yes	2007–2008	Yes.
Michigan	Yes	2013–2014	Yes.
Minnesota	Pd	Pd only (2011–2012)	No.
Mississippi	Pd	Pd only (2013–2014)	No.
Missouri	Yes	2011–2012	Yes.
Montana	No.		
Nebraska	No.		
New Hampshire	Yes	2008–2009	Yes.
New Jersey	Yes	2008–2009	Yes.
New York	Yes	2006–2007	Yes.
North Carolina	Yes	2010–2011	Yes.
North Dakota	No.		
Oklahoma	No.		
Ohio	Yes	2010–2011	Yes.
Pennsylvania	Yes	2008–2009	Yes.
Rhode Island	Unknown.		
South Carolina	Yes	2012–2013	No.
South Dakota	No.		
Tennessee	Yes	2009–2010	Yes.
Vermont	Yes	2007–2008	Yes.
Virginia	Yes	2008–2009	Yes.
West Virginia	Yes	2008–2009	Yes.
Wisconsin	Yes	2013–2014	Yes.
Wyoming	No.		

Seven species of North American hibernating bats have been confirmed with WNS to date: big brown bat, gray bat, eastern small-footed bat, little brown bat, northern long-eared bat, Indiana bat, and tricolored bat. The effect of WNS appears to vary greatly by species, with several species exhibiting high mortality and others showing low or no appreciable population-level effects (Turner *et al.* 2011, p. 13). The fungus that causes WNS has been detected on five additional species, but with no evidence of the infection characteristic of the disease; these include Rafinesque's big-eared bat (*Corynorhinus rafinesquii*), Virginia big-eared bat (*C. townsendii virginianus*), silver-haired bat (*Lasionycteris noctivagans*), eastern red bat (*Lasiurus borealis*), and southeastern bat (*Myotis austroriparius*).

The impacts of WNS on North American bat populations have been

substantial. Service and State biologists estimate that at least 5.7 million to 6.7 million bats of several species have died from WNS (Service 2012, p. 1). Dzal *et al.* (2011, p. 393) documented a 78 percent decline in the summer activity of little brown bats in New York State, coinciding with the arrival and spread of WNS, suggesting large-scale population effects. Turner *et al.* (2011, p. 22) reported an 88 percent decline in the number of all hibernating bats at 42 sites across New York, Pennsylvania, Vermont, Virginia, and West Virginia. Furthermore, Frick *et al.* (2010a, p. 681) concluded that the little brown bat, formerly the most common bat in the northeastern United States, is undergoing catastrophic declines in the region due to WNS, and is at risk of regional extirpation in the near future. Similarly, Thogmartin *et al.* (2013, p. 171) predicted that WNS is likely to extirpate the federally endangered Indiana bat over large parts of its range. While recent models by Ingersoll *et al.* (2013, p. 8) have raised some questions about the status of bat populations prior to the arrival of WNS, the empirical evidence from surveys of six species of hibernating bats in New York State, revealed populations that were likely stable or increasing prior to the emergence of WNS (Service 2011, p. 1). Subsequent to the emergence of WNS, decreases in some species of bats at affected hibernacula have ranged from 30 to 100 percent (Frick *et al.* 2010a, p. 680; Turner *et al.* 2011, pp. 16–19, 22).

The pattern of spread of WNS has generally followed predictable trajectories along recognized migratory pathways and overlapping summer ranges of hibernating bat species, with some exception. The range expansion of WNS and Pd has not only been limited to known migratory movements of bats. Kunz and Reichard (2010, p. 12) assert that WNS is spread and transmitted mainly through bat-to-bat contact; however, evidence suggests that fungal spores can be transmitted by humans (USGS National Wildlife Health Center (NWHC), Wildlife Health Bulletin 2011–05, unpaginated), and bats can also become infected by coming into contact with contaminated cave substrate (Darling and Hicks 2012, pers. comm.).

White-nose syndrome is caused by the psychrophilic (cold-loving) fungus Pd, which is likely exotic to North America, and only recently arrived on the continent (Puechmaille *et al.* 2011, p. 8; Foster, pers. comm.; Warnecke *et al.* 2012, p. 7001). The fungus grows on and within exposed soft tissues of hibernating bats (Lorch *et al.* 2011, p. 376; Gargas *et al.* 2009, pp. 147–154), and the resulting mycelium (vegetative part of fungus) is the white filamentous growth visible on the muzzle, ears, or flight membranes (wings and tail) of affected bats that is characteristic of WNS. Epidermal (skin) erosions that are filled with fungal hyphae (branching, filamentous structures of fungi) are the diagnostic standard for WNS (Blehert *et al.* 2009, p. 227; Meteyer 2009, p. 412). Pd grows optimally at temperatures from 5 to 16 °C (41 to 61 °F), the same temperature range at which North American bats typically hibernate (Blehert *et al.* 2009, p. 227; Verant *et al.* 2012, p. 4). The temperature in caves that serve as bat hibernacula ranges from 2 to 14 °C (36 to 57 °F), permitting year-round persistence and growth of the fungus on cave substrates, allowing such hibernacula to serve as a reservoir for maintaining the fungus through summer months in the absence of bats (Blehert *et al.* 2009, p. 227; Reynolds *et al.* 2015, unpaginated). Growth is relatively slow at optimal temperatures (5 to 16 °C (41 to 61 °F)), and no growth occurs at temperatures above 21.4 °C (75 °F) (Blehert *et al.* 2009, p. 227; Verant *et al.* 2012, pp. 4, 6). Although Pd does not grow above 21.4 °C, it is known to remain viable for extended periods of time above that temperature (Lorch *et al.* 2013, p. 237; Hoyt *et al.* 2014, pp. 2–3). Declines in Indiana bats have been greater under more humid conditions, suggesting that growth of the fungus and either intensity or prevalence of infections are higher in more humid conditions (Langwig *et al.* 2012, p. 1055). However, the effect of humidity on impacts of WNS in bat populations may vary among species. Furthermore, fungal load and prevalence varies among species in WNS-infected sites (Langwig *et al.* 2015, p. 4).

Although Pd has been isolated from numerous bat species in Europe, it is hypothesized that these species have evolved in the presence of the fungus (Wibbelt *et al.* 2010, p. 1241). Pikula *et al.* (2012, p. 210) confirmed that bats found dead in the Czech Republic exhibited lesions consistent with WNS infection; however, the authors also stated that the lesions were not believed to have contributed to the cause of death for those individuals. In all, there are now 12 European bat species, including one Rhinolophid in the sub-order Megachiroptera, that have been confirmed with the WNS disease (Zukal *et al.* 2014, p. 8) (based on the case definitions established in North America (USGS, NWHC 2014, unpaginated)), although no mortality has been documented to date in Europe. This point illustrates the fact that Pd is capable of infecting a wide variety of bat hosts across a large spatial scale.

Bats affected by WNS are characterized by some or all of the following signs: (1) Excessive or unexplained mortality at or near the hibernaculum; (2) visible fungal growth on wing and tail membranes, the muzzle, or the ears of live or recently dead bats; (3) abnormal behaviors including conspicuous daytime activity outside of the hibernaculum, shifts of large numbers to the cold areas near the entrance or elsewhere in the hibernaculum, and decreased arousal with human disturbance inside hibernaculum (torpid bats responding to noise and vibrations in the cave); (4) moderate to severe wing damage in nontorpid bats; and (5) and depleted fat reserves by mid-winter (USGS, NWHC 2012, p. 1; Service 2011, p. 2). Although the exact process or processes by which WNS leads to death remains unconfirmed, we do know that the fungal infection is responsible, and it is possible that reduced immune function during torpor compromises the ability of hibernating bats to combat the infection (Bouma *et al.* 2010, p. 623; Moore *et al.* 2011, p. 10; Moore *et al.* 2013, pp. 6–7; Reeder *et al.* 2012, p. 8; Johnson *et al.* 2014, unpaginated). It has also been hypothesized that immune reconstitution inflammatory syndrome (IRIS) causes mortality when systemic Pd-infections established during torpor initiate a massive inflammatory response when the infected bat emerges from hibernation (Meteyer *et al.* 2012, pp. 585, 587).

No information was known about Pd and WNS prior to 2007. Early working hypotheses demonstrated that it was not known whether WNS-affected bats before the hibernation season began or if bats arrived at hibernacula sites unaffected and entered hibernation with sufficient fat stores (WNS Science Strategy Group 2008, p. 7). Hibernating bats rely on stored fats to survive winter months, when insect prey is not available. In a related study, 12 of 14 bats (10 little brown bats, 1 big-brown bat, and 1 tri-colored bat) had appreciable degree of fat stores, even though they were infected with WNS and were on the lower end of the normal range of body weight (Courtin *et al.* 2010, p. 214). Further research has lead scientists to suggest that bats are capable of clearing fungal infections during the summer in some areas, and are likely re-infected with Pd when they return to swarming sites or hibernacula in the fall (Langwig *et al.* 2015, p. 6). However, Dobony (2014, pers. comm.) noted the presence of viable Pd in a maternity roost throughout summer

months, indicating that in some situations bats can be exposed to the fungus year-round. Boyles and Willis (2010, pp. 92–98) hypothesized that infection by Pd alters the normal arousal cycles of hibernating bats, particularly by increasing arousal frequency, duration, or both. In fact, Reeder *et al.* (2012, p. 5) and Warnecke *et al.* (2012, p. 2) observed an increase in arousal frequency in laboratory studies of hibernating bats infected with Pd. A disruption of this torpor–arousal cycle could cause bats to metabolize fat reserves too quickly, thereby leading to starvation (Warnecke *et al.* 2012, p. 4). The root cause of these increased arousal bouts remains under investigation, but some have suggested that skin irritation from the fungus might cause bats to arouse and remain out of torpor for longer than normal to groom (Boyles and Willis 2010, p. 93). Routine arousal bouts serve to maintain critical conditions like water balance and immune function; however, arousals are energetically costly, and anything resulting in greater energy expenditure has the potential to cause mortality.

It has also been hypothesized that resulting mortality from infection of Pd is due specifically to fungal infection of bats' wings. Cryan *et al.* (2010, pp. 135–142) suggests that mortality may be caused by catastrophic disruption of wing-dependent physiological functions. The authors also hypothesized that Pd may cause dehydration, trigger thirst-associated arousals, cause significant circulatory and thermoregulatory disturbance, disrupt respiratory gas exchange, and destroy wing structures necessary for flight control (Cryan *et al.* 2010, p. 141). Further, the wings of winter-collected WNS-affected bats often reveal signs of infection, and the degree of damage observed suggests functional impairment (Willis *et al.* 2011, pp. 370–371; Cryan *et al.* 2010, pp. 137–138). In related research, Cryan *et al.* (2013, p. 398) found that electrolytes tended to decrease as wing damage increased in severity; electrolytes are necessary for maintaining physiological homeostasis, and any imbalance could be life-threatening (Cryan *et al.* 2013, p. 398). Again, although the exact proximate mechanism by which WNS affects bats is still under investigation, the fact that it can result in death for many hibernating bat species is well documented.

Effects of White-Nose Syndrome on the Northern Long-Eared Bat

The northern long-eared bat is susceptible to WNS, and mortality of northern long-eared bats due to the disease has been confirmed throughout the majority of the WNS-affected range (Ballmann 2013, pers. comm.; Last 2013, pers. comm.). The observed spread of WNS in North America has been rapid, with the fungus that causes the disease (Pd) expanding over 1,000 miles (1,609 km) from the first documented evidence in New York in February 2006, to 28 States and 5 Canadian provinces by February 2015. Pd now affects an estimated 60 percent of the northern long-eared bat's total geographic range, and is expected to continue to spread at a similar rate through the rest of the range (Service 2015, unpublished data). WNS has been confirmed in 25 of the 37 States (does not include the District of Columbia) in the range of northern long-eared bat. Furthermore, although WNS has not been confirmed in Rhode Island or the District of Columbia, those areas are entirely surrounded by WNS.

Although there is some variation in spread dynamics and the impact of WNS on bats when it arrives at a new site, we have no information to suggest that any site within the known range of the northern long-eared bat would be unsusceptible to the arrival of Pd. There is some evidence that microclimate may affect fungal and disease progression and there is a possibility that certain conditions may hinder disease progression in infected bats at some sites, but the degree to which this can be predicted at continental scales remains uncertain. Given the appropriate amount of time for exposure, WNS appears to have had similar levels of impact on northern long-eared bats everywhere the species has been documented with the disease. Therefore, absent direct evidence to suggest that some northern long-eared bats that encounter Pd do not contract WNS, available information suggests that the species will be impacted by WNS everywhere in its range.

Northern long-eared bats may favor small cracks or crevices in cave ceilings, making locating them more challenging during hibernacula surveys than other species that are typically found in clusters in open areas (*e.g.,* little brown bat, Indiana bat). However, winter surveys represent the best available data for assessing population trends for this species (Ingersoll *et al.* 2013, p. 9; Herzog 2015, pers. comm.). Progression from the detection of a few bats with visible fungus to widespread mortality may take a few weeks to 2 years (Turner *et al.* 2011, pp. 20–21). Although there is variation in when the decline is observed (*e.g.,* a few weeks to 2 years after detection of the disease), there appears to be little or no variation as to whether a decline happens (Service 2014, unpublished data). Microclimate inside the cave, duration and severity of winter, hibernating behavior, body condition of bats, genetic structure of the colony, and other variables may affect the timeline and severity of impacts at the site level. However, there is no evidence to date that any of these variables would greatly delay or reduce mortality in infected colonies.

WNS has been present in the eastern portion of the northern long-eared bat's range the longest; therefore, there is a greater amount of post-WNS hibernacula and summer data available from that region to discuss and examine the impacts of the disease on the species. Turner *et al.* (2011, p. 22) compared the most recent pre-WNS count to the most recent post-WNS count for 6 cave bat species and reported a 98 percent total decline in the number of hibernating northern long-eared bats at 30 hibernacula in New York, Pennsylvania, Vermont, Virginia, and West Virginia through 2011. Data analyzed in this study were limited to sites with confirmed WNS mortality for at least 2 years and sites with comparable survey effort across pre- and post-WNS years.

The Service conducted an analysis of additional survey information at 103 sites across 12 U.S. States and Canadian provinces (New York, Pennsylvania, Vermont, West Virginia, Virginia, New Hampshire, Maryland, Connecticut, Massachusetts, North Carolina, New Jersey, and Quebec) and found comparable declines in winter colony size. All 103 sites analyzed had historical records of northern long-eared bat presence, at least one survey in the 10-year period before WNS was detected, and at least one survey conducted 2 or more years after WNS was detected (Service 2014, unpublished data). In these sites, total northern long-eared bat counts declined by an average of 96 percent after the arrival of WNS; 68 percent of the sites declined to zero northern long-eared bats, and 92 percent of sites declined by more than 50 percent. Similarly, Frick *et al.* (2015, p. 6) documented that northern long-eared bats are now considered extirpated from 69 percent of the hibernacula (in Vermont, New York, Pennsylvania, Maryland, Virginia, and West Virginia) that had colonies of northern long-eared bats prior to WNS. Similar observations have been documented over several years. In a study by Langwig *et al.* (2012, p. 1054), 14 populations of northern long-eared bats in New York, Vermont, and Connecticut became locally extinct within 2 years due to disease, and no

population was remaining 5 years post-WNS (Langwig *et al.* 2012, p. 1054). In addition, Langwig (2014, in litt.) stated that, in more than 50 caves and mines surveyed in New York, Vermont, New Hampshire, Virginia, and Illinois, the northern long-eared bat is extirpated from all sites (that had continuous population counts) where WNS has been present for more than 4 years. Hibernacula surveys conducted in Pennsylvania in 2013 revealed a 99 percent decline (637 to 5 bats) at 34 sites where northern long-eared bats were known to hibernate prior to WNS (PGC 2013, unpublished data). In the Northeast, where WNS has been present for 5 or more years, the northern long-eared bat is only rarely encountered on the summer landscape. For example, in Vermont, the species was the second most common bat in the State before WNS, and it is now one of the least likely to be encountered (VFWD 2014, in litt.). Northern long-eared bats were also widespread throughout New York prior to WNS; however, post-WNS captures of this species have declined dramatically (approximately 93 percent) in the eastern part of the State (NYSDEC 2012, unpublished data). The one potential exception in New York is the Long Island population, where the species continues to be found in small numbers during summer surveys. However, these observations are unproven at this point and are the basis for ongoing research. Long-term summer data (including pre- and post-WNS) for the northern long-eared bat, where available, corroborate the population decline observed during hibernacula surveys. For example, summer surveys from 2005–2011 near Surry Mountain Lake in New Hampshire showed a 98 percent decline in capture success of northern long-eared bats post-WNS, which is similar to the hibernacula data for the State (a 95 percent decline) (Moosman *et al.* 2013, p. 554). Likewise, summer monitoring in Virginia from 2009 to present has revealed that declines in northern long-eared bats were not observed by VDGIF until 2 years after the severe declines were observed during winter and fall monitoring efforts in the State (Reynolds 2013, pers. comm.). These trends provide context for the indices of abundance of northern long-eared bats reported in States such as Pennsylvania and West Virginia, where the arrival of Pd at sites has been prolonged over several years (Miller-Butterworth *et al.* 2014). For example, in Pennsylvania, declines of 99 percent of northern long-eared bats counted in winter surveys corresponded with declines of 76 percent in summer capture rates; additionally, the decline in summer captures continues at an average rate of 15 percent annually (PGC 2014, in litt.). The fact that similar severe declines are documented in both summer and winter estimates demonstrates that northern long-eared bats are succumbing to WNS both at conspicuous hibernacula where they are surveyed and at undocumented hibernacula where they are not monitored directly.

Early reports from WNS-affected States in the Midwest reveal that similar rates of decline in northern long-eared bats are already occurring or are fast approaching. As reported in the *Distribution and Relative Abundance* section, above, in the two Ohio mines where an estimated 90 percent of Ohio's winter bat population hibernates, northern long-eared bat numbers decreased by 94 percent (combined for both hibernacula) from pre-WNS average counts (ODNR 2014, unpublished data). During the summer, ODNR Statewide acoustic surveys show a decline in northern long-eared bats of 56 percent since the pre-WNS years (ODNR 2014, unpublished data). Summer capture rates of northern long-eared bats from mist-net surveys (mostly conducted for Indiana bat presence) have declined by 58 percent per mist-net site post-WNS (Service 2014, unpublished data). Also, at two Illinois' major hibernacula, significant mortality of northern long-eared bats was observed in the first year after WNS was first detected, and the population at one site experienced a 97 percent decline, while the population decline at the second site was over 99 percent (Illinois Department of Natural Resources 2014, unpublished data).

As stated in the *Distribution and Relative Abundance* section, above, in the southern portion of the species' range, it is difficult to draw conclusions about winter population trends pre- and post- WNS introduction (due to a lack of surveys, historical variability of winter populations, or lack of standardized data); however, northern long-eared bat mortality associated with WNS has been observed at sites in Arkansas, Kentucky, North Carolina, and Tennessee. Also, some declines have been documented via hibernacula surveys in this region. For example, at a hibernaculum in Arkansas, mortality of northern long-eared bats was documented in the first year of known infection with Pd (Sasse 2014, pers. comm.). Over 70 percent of the 185 northern long-eared bats tested for the presence of Pd in Tennessee hibernacula between 2011 and 2014 were found to have Pd (Bernard 2014, in litt.). Also, in the Great Smoky Mountains National Park, 2014 capture rates of northern long-eared bats in comparison to 2009–2012 declined by 71 to 94 percent (across all sites) based on unit of effort comparisons (NPS 2014, in litt.; Indiana State University 2015, in litt.). Summer population trends are also difficult to summarize at this time, due to a lack of surveys or standardized data, although long-term data at localized sites have shown declines in northern long-eared bats.

All models of WNS spread dynamics predict that Pd, and hence the disease, will continue to spread (Maher *et al.* 2012, pp. 5–7; Ihlo 2013, unpublished; Hallam *et al.,* unpublished). These models estimate the disease will cover the entirety of the northern long-eared bat's range (within the models limited geographic limits (the United States)) by sometime between 2 and about 40 years (although estimating WNS arrival dates was not a primary objective of the analysis; Maher *et al.* 2012, pp. 5–7; Ihlo 2013, unpublished; Hallam *et al.,* unpublished). However, these models all have significant limitations (*e.g.,* failure to account for: Transmission through non-cave hibernacula, spread through Canada, and various biological aspects of disease transmission), and in many instances have either overestimated (predicted WNS would impact later) or underestimated the time at which WNS would arrive in counties that have become infected since the model was published. WNS arrived to surveyed sites 1 to 5 years (mean=2 years) earlier than predicted or when predicted by the Ihlo (2013, unpublished) model. WNS arrived 1 to 4 years later (mean=1 year) than predicted by Maher *et al.* (2012, pp. 1–8) in approximately 75 counties; 1 to 46 years earlier (mean=5 years) than predicted in approximately 75 counties; and when predicted in approximately 25 counties. For example, Pd was documented in Jasper County, Mississippi, in 2014, 45 years in advance of predictions by Maher *et al.* (2012). Maher (2014, in litt.) also commented that the spread rate of Pd may increase with longer winters, suggesting that spread of Pd in the northern portion of the northern long-eared bat's range with longer winters would be faster than in portions with shorter winters.

As described, there are limitations and uncertainties with relying on these models to predict the rate at which the fungus will spread to currently unaffected areas. Thus, we instead relied on the observed rate of spread to date of Pd to develop a calculation of projected rate of spread through the

remaining portion of the northern long-eared bat's range. WNS was first recorded in a cave in New York in 2006. Based on the observed spread of Pd from its point of origin in New York that has occurred to date, the area affected by Pd in North America is expanding at an average rate of roughly 175 miles (280 km) per year. At this average rate of spread, Pd can be expected to occur throughout the range of the northern long-eared bat in an estimated 8 to 9 years from December 2014. The COSEWIC used a similar method to calculate spread in their assessment of 3 bat species; they estimated that the entire range of the northern long-eared bat would be infected within 12 to 15 years (COSEWIC 2013, p. xiv) from November 2013.

Northern long-eared bats exhibit behaviors (*e.g.,* hibernating solitarily or in small clusters, using alternative hibernacula) that have been hypothesized to potentially limit exposure to Pd and reduce the impacts of WNS; however, there currently is no empirical evidence to suggest that these behaviors have mitigated the impacts of WNS, and the northern long-eared bat has been found to be one of the most highly susceptible bat species to WNS (Langwig *et al.* 2015, p. 4). Griffin (1945) reported that northern long-eared bats hibernate in ''unsuspected retreats,'' away from large colonies of other species and where caves and mines are not present, suggesting they may be able to limit exposure to Pd. In the southern extent of their range, northern long-eared bats have been documented sporadically arousing from torpor throughout the winter and moving between hibernacula (Griffin 1940a, p. 185; Whitaker and Rissler 1992a, p. 131; Caceres and Barclay 2000, pp. 2–3). It has been suggested that these periodic arousals provide a hypothetical mechanism by which fungal growth, and resulting infection, may be limited. However, as described in the ''Hibernation'' section under *Biology,* above, northern long-eared bats prefer to hibernate at temperatures between 0 and 9 °C (Raesly and Gates 1987, p. 18; Caceres and Pybus 1997, p. 2; Brack 2007, p. 744), which falls within the optimal growth limits of Pd, 5 and 16 °C (41 and 61 °F) (Blehert *et al.* 2009, p. 227; Verant *et al.* 2012, p. 4), making them susceptible to WNS infection once exposed to Pd, regardless of hibernaculum type. Northern long-eared bats also roost in areas within hibernacula that have higher humidity. Cryan *et al.* (2010, p. 138) suggested this roosting preference may be due to the northern long-eared bat's high intrinsic rates of evaporative water loss during torpor. Langwig *et al.* (2012, p. 1055) suggested that these more humid conditions could explain why northern long-eared bats actually experience higher rates of infection than other species, such as Indiana bats.

Northern long-eared bats have been reported to enter hibernation in October or November, but sometimes return to hibernacula as early as August, and emerge in March or April (Caire *et al.* 1979, p. 405; Whitaker and Hamilton 1998, p. 100; Amelon and Burhans 2006, p. 72). This extended period of time (in comparison to many other cave bat species that have been less impacted by WNS) may explain observed differences in fungal loads of Pd when compared to less susceptible species because the fungus has more time to infect bats and grow. Langwig *et al.* (2015, p. 4) determined that nearly 100 percent of northern long-eared bats sampled in 30 hibernacula across 6 States (New York, Vermont, Massachusetts, Virginia, New Hampshire, and Illinois) were infected with Pd early in the hibernation period, and that northern long-eared bats had the highest Pd-load of any other species in these sites. Similar patterns of high prevalence and fungal load in northern long-eared bats were reported by Bernard (2014, pers. comm.; Bernard 2014, in litt.) for bats surveyed outside of hibernacula in Tennessee during the winter. Furthermore, the northern long-eared bat occasionally roosts in clusters or in the same hibernacula as other bat species that are also susceptible to WNS (see the ''Hibernation'' section under *Biology,* above,) and are susceptible to bat-to-bat transmission of WNS.

Information provided to the Service by a number of State agencies demonstrates that the area currently (as of 2015) affected by WNS likely constitutes the core of the species' range, where densities of northern long-eared bats were highest prior to WNS. Further, it has been suggested that the species was considered less common or rare in the extreme southern, western, and northwestern parts of its range (Caceres and Barclay 2000, p. 2; Harvey 1992, p. 35), areas where WNS has not yet been detected. The northern long-eared bat has been extirpated from hibernacula where WNS, has been present for a significant number of years (*e.g.,* 5 years), and has declined significantly in other hibernacula where WNS has been present for only a few years. A corresponding decline on the summer landscape has also been witnessed. As WNS expands to currently uninfected areas within the range of northern long-eared bat, there is the expectation that the disease, wherever found, will continue to negatively affect the species. WNS is the predominant threat to the northern long-eared bat rangewide, and it is likely to spread to the entirety of the species' range.

II. Other Diseases

Infectious diseases observed in North American bat populations include rabies, histoplasmosis, St. Louis encephalitis, and Venezuelan equine encephalitis (Burek 2001, p. 519; Rupprecht *et al.* 2001, p. 14; Yuill and Seymour 2001, pp. 100, 108). Rabies is the most studied disease of bats, and can lead to mortality, although antibody evidence suggests that some bats may recover from the disease (Messenger *et al.* 2003, p. 645) and retain immunological memory to respond to subsequent exposures (Turmelle *et al.* 2010, p. 2364). Bats are hosts of rabies in North America (Rupprecht *et al.* 2001, p. 14), accounting for 24 percent of all wild animal cases reported during 2009 (Blanton *et al.* 2010, p. 648). Although rabies is detected in up to 25 percent of bats submitted to diagnostic labs for testing, less than 1 percent of bats sampled randomly from wild populations test positive for the virus (Messenger *et al.* 2002, p. 741). Northern long-eared bat is among the species reported positive for rabies virus infection (Constantine 1979, p. 347; Burnett 1989, p. 12; Main 1979, p. 458); however, rabies is not known to have appreciable effects to the species at a population level.

Histoplasmosis has not been associated with the northern long-eared bat and may be limited in this species compared to other bats that form larger aggregations with greater exposure to guano-rich substrate (Hoff and Bigler 1981, p. 192). St. Louis encephalitis antibody and high concentrations of Venezuelan equine encephalitis virus have been observed in big brown bats and little brown bats (Yuill and Seymour 2001, pp. 100, 108), although data are lacking on the prevalence of these viruses in northern long-eared bats. Equine encephalitis has been detected in northern long-eared bats (Main 1979, p. 459), although no known population declines have been found due to presence of the virus. Northern long-eared bats are also known to carry a variety of pests including chiggers, mites, bat bugs, and internal helminthes (Caceres and Barclay 2000, p. 3). However, the level of mortality caused by WNS far exceeds mortality from all other known diseases and pests of the northern long-eared bat.

Predation

Animals such as owls, hawks, raccoons, skunks, and snakes prey upon bats, although a limited number of animals consume bats as a regular part of their diet (Harvey *et al.* 1999, p. 13). Northern long-eared bats are believed to experience a small amount of predation; therefore, predation does not appear to be a population changing cause of mortality (Caceres and Pybus 1997, p. 4; Whitaker and Hamilton 1998, p. 101).

Predation has been observed at a limited number of hibernacula within the range of the northern long-eared bat. Of the State and Federal agency responses received pertaining to northern long-eared bat hibernacula and threat of predation, 1 hibernaculum in Maine, 3 in Maryland (2 of which were due to feral cats), 1 in Minnesota, and 10 in Vermont were reported as being prone to predation. In one instance, domestic cats were observed killing bats at a hibernaculum used by northern long-eared bat in Maryland, although the species of bat killed was not identified (Feller 2011, unpublished data). Turner (1999, personal observation) observed a snake (species unknown) capture an emerging Virginia big-eared bat in West Virginia. Tuttle (1979, p. 11) observed (eastern) screech owls (*Otus asio*) capturing emerging gray bats. Northern long-eared bats are known to be affected to a small degree by predators at summer roosts. Carver and Lereculeur (2013, pp. N6–N7) observed predation of a northern long-eared bat by a gray rat snake during the summer; Sparks *et al.* (2003, pp. 106–107) described attempts by raccoons to prey on both Indiana bats and evening bats. Avian predators, such as owls and magpies, have been known to successfully take individual bats as they roost in more open sites, although this most likely does not have an effect on the overall population size (Caceres and Pybus 1997, p. 4). In summary, because bats are not a primary prey source for any known natural predators, it is unlikely that predation has substantial effects on the species at this time.

Conservation Efforts To Reduce Disease or Predation

As mentioned above, WNS is responsible for unprecedented mortality in some species of hibernating bats in eastern North America, including the northern long-eared bat, and the disease continues to spread. In 2011, the Service, in partnership with several other State, Federal, and Tribal agencies, finalized a national response plan for WNS (*A National Plan for Assisting States, Federal Agencies, and Tribes in Managing White-Nose Syndrome in Bats; https://www.whitenosesyndrome.org/national-plan/white-nose-syndrome-national-plan*) to provide a common framework for the investigation and management of WNS (Service 2011, p. 1). In 2012, a sister plan was finalized for the national response to WNS in Canada (*A National Plan to Manage White Nose Syndrome in Bats in Canada; http://www2.ccwhc.ca/publications/Canadian%20WNS%20Management%20Plan.pdf*), allowing for a broader coordinated response to the disease throughout the two countries. The multi-agency, multi-organization WNS response team, under the U.S. National Plan and in coordination with Canadian partners, has and continues to develop recommendations, tools, and strategies to slow the spread of WNS, minimize disturbance to hibernating bats, and improve conservation strategies for affected bat species. Some of these products include: Decontamination protocols; cave management strategies and best management practices (BMPs); forestry BMPs; nuisance wildlife control operator BMPs; transportation and bridge BMPs; hibernacula microclimate monitoring recommendations; wildlife rehabilitator BMPs; and a bat species ranking document for conservation actions. These containment and other strategies are intended to slow the spread of WNS and allow time for development of management options. The multi-agency, multi-partner National WNS Decontamination protocol (*https://www.whitenosesyndrome.org/topics/decontamination*) was developed to provide specific procedures to minimize the risk of transmitting the fungus when conducting work involving close direct contact with bats, their environments, or associated materials. In addition to bat-to-bat transmission of the disease agent, fungal spores can also be transmitted by human actions (USGS NWHC, Wildlife Health Bulletin 2011–05, unpaginated), and decontamination remains one of the only management options available to reduce the risk of human-assisted transmission. Decontamination protocols have been integrated into other protocols and BMPs that involve close direct contact with bats or their environments.

In 2009, the Service also issued a recommendation for a voluntary moratorium on all caving activity in States known to have hibernacula affected by WNS, and all adjoining States, unless conducted as part of an agency-sanctioned research or monitoring project (Service 2009, entire). These recommendations have been reviewed annually and a revised version, including a multi-agency endorsement through the national WNS Steering Committee, is expected to be completed soon. Though not mandatory or required, many State, Federal, and Tribal agencies, along with other organizations and entities, operating within the northern long-eared bat's range have incorporated the recommendations and protocols in the WNS National Plan in their own local response plans. The Western Bat Working Group, for example, has developed a *White-nose Syndrome Action Plan,* a comprehensive strategy to prevent the spread of WNS that covers States currently outside the range of WNS (Western Bat Working Group 2010, pp. 1–11).

The NPS is currently updating their cave management plans (for parks with caves) to include actions to minimize the risk of WNS spreading to uninfected caves. These actions include WNS education, screening visitors for disinfection, and closure of caves if necessary (NPS 2013, *http://www.nature.nps.gov/biology/WNS*). In April 2009, all caves and mines on USFS lands in the Eastern and Southern Regions were closed on an emergency basis in response to the spread of WNS, and closures on other USFS lands have been announced as well. In 2014, the closure order was extended for 5 more years in the USFS's Southern Region. Eight National Forests in the Eastern Region contain caves or mines that are used by bats; caves and mines on seven of these National Forests (Allegheny, Hoosier, Ottawa, Mark Twain, Monongahela, Shawnee, and Wayne) were closed, and no closure is needed for the one mine on the eighth National Forest (Green Mountain) because it is already gated with a bat-friendly structure. Forest supervisors continue to evaluate the most recent information on WNS to inform decisions regarding extending cave and mine closures for the purpose of slowing the spread of WNS and reducing the impacts of disturbance on WNS-affected bat populations (USFS 2013, *http://www.fs.usda.gov/detail/r9/plants-animals/wildlife/?cid=stelprdb5438954*). Caves and mines on USFS lands in the Rocky Mountain Region were closed on an emergency basis in 2010, in response to WNS, but since then have been reopened (USFS 2013, *http://www.fs.usda.gov/detail/r2/home/?cid=stelprdb5319926*). In place of the emergency closures, the Rocky Mountain Region will implement an adaptive management strategy that will

require registration to access an open cave, prohibit use of clothing or equipment used in areas where WNS is found, require decontamination procedures prior to entering any and all caves, and require closure of all known hibernacula caves during the winter hibernation period. Although the above-mentioned WNS-related conservation measures may help reduce or slow the spread of the disease, these efforts are not currently enough to ameliorate the population-level effects to the northern long-eared bat.

Research is also under way to develop control and treatment options for WNS-infected bats and environments. A number of potential treatments are currently being explored and are in various stages of development. Risks to other biota or the environment need to be assessed when considering disease management trials in a field setting. No treatment strategies have been tested on the northern long-eared bat, to date, and there remains no demonstrated safe or effective treatment for WNS. It remains unknown whether treatment of bats may increase survival or allow the northern long-eared bat to survive exposure to the pathogen. Potential treatment of the northern long-eared bat will be further complicated by the dispersed winter roosting habits of the species and difficulty finding the species in hibernacula. Further, no treatment in development has demonstrated any potential to allow a species to adapt to the presence of the pathogen. More research and coordination is needed to address the safety and effectiveness of any treatment proposed for field use and to meet regulatory requirements prior to consideration of widespread application. Therefore, a landscape-scale approach to reduce the impacts of WNS is still at least a few years away.

Summary of Disease and Predation

The northern long-eared bat is highly susceptible to white-nose syndrome and mortality of the species due to the disease has been documented throughout the majority of its range. WNS is caused by the nonnative fungus Pd, which is believed to have originated in Europe. WNS has been found in 25 States and 5 Canadian provinces since first discovered in New York in 2007, and at least seven bat species are confirmed to be susceptible in North America. The fungus that causes WNS has been documented in an additional three States. WNS infection, characterized by visible fungal growth on the bat, alters the normal arousal cycles of hibernating bats, causes severe wing damage, and depletes fat reserves, and it has resulted in substantial mortality of North American bat populations.

The effect of WNS on northern long-eared bats has been especially severe and has caused mortality in the species throughout the majority of the WNS-affected range. This is currently viewed as the predominant threat to the species, and if WNS had not emerged or was not affecting northern long-eared bat populations to the level that it has, we presume the species would not be declining to the degree observed. A recent study revealed that the northern long-eared bat has experienced a precipitous population decline, estimated at approximately 96 percent (from hibernacula data) in the northeastern portion of its range, due to the emergence of WNS. WNS has spread to approximately 60 percent of the northern long-eared bat's range in the United States, and if the observed average rate of spread of Pd continues, the fungus will be found in hibernacula throughout the entire species' range within 8 to 13 years based on the calculated rate of spread observed to date (by both the Service and COSEWIC). We expect that similar declines as seen in the East and portions of the Midwest will be experienced in the future throughout the rest of the species' range. There has been a sustained and coordinated effort between partners (*e.g.,* Federal, State, Canada, nongovernment) to curtail the spread of WNS, and while these measures may reduce or slow the spread of WNS, these efforts are currently not enough to ameliorate the population-level effects on the northern long-eared bat. Also, research is under way to develop control and treatment options for WNS-infected bats and hibernacula; however, additional research is needed before potential treatments are implemented on a landscape scale.

Other diseases are known or suspected to infect northern long-eared bats, but none is known to have appreciable effects on the species. Also, it is unlikely that predation is significantly affecting the species at this time.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, regulations, and other such mechanisms that may reduce any of the threats we describe in threat analyses under the other four factors. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the effects from one or more identified threats. In this section, we review existing State, Federal, and local regulatory mechanisms to determine whether they effectively reduce or remove threats to the northern long-eared bat.

No existing regulatory mechanisms have been shown to sufficiently protect the species against WNS, the primary threat to the northern long-eared bat; thus, despite regulatory mechanisms that are currently in place, the species is still at risk. There are, however, some mechanisms in place to provide some protection from other factors that may act cumulatively with WNS. As such, the discussion below provides a few examples of such existing regulatory mechanisms.

Canadian Laws and Regulations

In 2014, the northern long-eared bat was determined, under an emergency assessment, to be endangered under the Canadian Species at Risk Act (SARA) (Species at Risk Public Registry 2014). The SARA makes it an offense to kill, harm, harass, capture, or take an individual of a listed species that is endangered or threatened; possess, collect, buy, sell, or trade an individual of a listed species that is extirpated, endangered, or threatened, or its part or derivative; or to damage or destroy the residence of one or more individuals of a listed endangered or threatened species or of a listed extirpated species if a recovery strategy has recommended its reintroduction. For most of the species listed under SARA, including the northern long-eared bat, the prohibitions on harm to individuals and destruction of residences are limited to Federal lands.

U.S. Federal Laws and Regulations

Several laws and regulations help Federal agencies protect bats on their lands, such as the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*) that protects caves on Federal lands and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) review, which serves to mitigate effects to bats due to construction activities on federally owned lands. The NPS has additional laws, policies, and regulations that protect bats on NPS units, including the NPS Organic Act of 1916 (16 U.S.C. 1 *et seq.*), NPS management policies (related to exotic species and protection of native species), and NPS policies related to caves and karst systems (provides guidance on placement of gates on caves not only to address human safety concerns, but also for the preservation of sensitive bat habitat) (Plumb and Budde 2011, unpublished data). Even if a bat species is not listed under the Act, the NPS works to minimize effects to the species. In addition, the NPS Research Permitting and Reporting System tracks research permit applications and investigator annual reports, and NPS management policies require non-NPS studies conducted in parks to conform to NPS policies and guidelines regarding the collection of bat data (Plumb and Budde 2011, unpublished data).

The northern long-eared bat is considered a ''sensitive species'' throughout the USFS's Eastern Region (USFS 2012, *http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5384459.pdf*). As such, the northern long-eared bat must receive, ''special management emphasis to ensure its viability and to preclude trends toward endangerment that would result in the need for Federal listing. There must be no effects to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significantly reduce sensitive species numbers'' (Forest Service Manual (FSM) 2672.1, *http://www.fs.fed.us/im/directives/fsm/2600/2672-2672.24a.txt*).

State Laws and Regulations

The northern long-eared bat is listed in few of the States within the species' range. The northern long-eared bat is listed as endangered under the Massachusetts endangered species act, under which all listed species are, ''protected from killing, collecting, possessing, or sale and from activities that would destroy habitat and thus directly or indirectly cause mortality or disrupt critical behaviors.'' In addition, listed animals are specifically protected from activities that disrupt nesting, breeding, feeding, or migration (Massachusetts Division of Fisheries and Wildlife 2012, unpublished document). In Wisconsin, all cave bats, including the northern long-eared bat, were listed as threatened in the State in 2011, due to previously existing threats and the impending threat of WNS (Redell 2011, pers. comm.). It is illegal to take, transport, possess, process, or sell any wild animal that is included on the Wisconsin Endangered and Threatened Species List without a valid endangered or threatened species permit. Certain development projects (*e.g.,* wind energy), however, are excluded from regulations that are in place to protect the species in Wisconsin (WDNR, unpublished document, 2011, p. 4). In Vermont, the northern long-eared bat was provided protection by being listed as endangered under the Vermont endangered species law. Except where authorized by separate chapters of the law, the Vermont law states, ''a person shall not take, possess or transport wildlife or plants that are members of an endangered or threatened species.'' The northern long-eared bat is considered as some form of species of concern in 18 States: ''Species of Greatest Concern'' in Alabama and Rhode Island; ''Species of Greatest Conservation Need'' in Delaware, Iowa, and Michigan; ''Species of Concern'' in Ohio and Wyoming; ''Rare Species of Concern'' in South Carolina; ''Imperiled'' in Oklahoma; ''Critically Imperiled'' in Louisiana; ''Species of Conservation Concern'' in Missouri, and ''Species of Special Concern'' in Indiana, Maine, Minnesota, New Hampshire, North Carolina, Pennsylvania, and South Carolina. In Kansas, the State has been petitioned to evaluate the northern long-eared bat as ''threatened'' in accordance with the Kansas Nongame and Endangered Species Act.

In the following States, there is either no State protection law or the northern long-eared bat is not protected under the existing law: Arkansas, Connecticut, Florida, Georgia, Illinois, Kansas, Kentucky, Maryland, Mississippi, Montana, Nebraska, New Jersey, New York, North Dakota, Tennessee, Virginia, and West Virginia. In Kentucky, although the northern long-eared bat does not have a State listing status, it is considered protected from take under Kentucky State law.

Wind energy development regulation varies by State within the northern long-eared bat's range. For example, in Virginia, although there are not currently any wind energy developments in the State, new legislation requires operators to ''measure the efficacy'' of mitigation, with the objective of reducing bat fatalities (Reynolds 2011, unpublished data). In Vermont, all wind energy facilities are required to conduct bat mortality surveys, and at least two of the three currently permitted wind facilities in the State include application of operational adjustments (curtailment) to reduce bat fatalities (Smith 2011, unpublished data). Other States, many of which have expansive wind energy development, have no regulatory program for wind energy projects.

Summary of Inadequacy of Existing Regulatory Mechanisms

No existing regulatory mechanisms have been shown to sufficiently protect the species against WNS, the primary threat to the northern long-eared bat. Therefore, despite regulatory mechanisms that are currently in place for the northern long-eared bat, the species is still at risk, primarily due to WNS, as discussed under *Factor C.*

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Wind Energy Development

Significant bat mortality has been witnessed associated with utility-scale (greater than or equal to 0.66 megawatt (MW)) wind turbines along forested ridge tops in the eastern and northeastern United States and in agricultural areas of the Midwest (Johnson 2005, p. 46; Arnett *et al.* 2008, p. 63; Cryan 2011, p. 364; Arnett and Baerwald 2013, p. 441; Hayes 2013, p. 977; Smallwood 2013, p. 26). Recent estimates of bat mortality from wind energy facilities vary considerably depending on the methodology used and species of bat. Arnett and Baerwald (2013 p. 443) estimated that 650,104 to 1,308,378 bats had been killed at wind energy facilities in the United States and Canada as of 2011, and expected another 196,190 to 395,886 would be lost in 2012. Other bat mortality estimates range from ''well over 600,000 . . . in 2012'' (Hayes 2013, p. 977; [but see Huso and Dalthorp 2014, p. 546–547]) to 888,000 bats per year (Smallwood 2013, p. 26), and mortality can be expected to increase as more turbines are installed on the landscape. The majority of bats killed include migratory foliage-roosting species the

hoary bat (*Lasiurus cinereus*) and eastern red bat, and the migratory, tree- and cavity-roosting silver-haired bat (Arnett *et al.* 2008, p. 64; Cryan 2011 p. 364; Arnett and Baerwald 2013, p. 444).

The Service reviewed post-construction mortality monitoring studies at 62 unique operating wind energy facilities in the range of the northern long-eared bat in the United States and Canada. In these studies, 41 northern long-eared bat mortalities were documented, comprising less than 1 percent of all bat mortalities. Northern long-eared bat mortalities were detected throughout the study range, including: Illinois, Indiana, Maryland, Michigan, Missouri, New York, Pennsylvania, West Virginia, and Ontario. Northern long-eared bat mortalities were detected at 29 percent of the facilities studied. There is a great deal of uncertainty related to extrapolating these numbers to generate an estimate of total northern long-eared bat mortality at wind energy facilities due to variability in post-construction survey effort and methodology (Huso and Dalthorp 2014, pp. 546–547). Bat mortality can vary between years and between sites, and detected carcasses are only a small percentage of total bat mortalities. Despite these limitations, Arnett and Baerwald (2013, p. 444) estimated that wind energy facilities in the United States and Canada killed between 1,175 and 2,433 northern long-eared bats from 2000 to 2011.

The number of bats actually killed at the facilities discussed above is certainly larger than the 41 individuals that were found. Only a portion of carcasses are found during post-construction mortality surveys, most studies only cover a 1- or 2-year period at a single site, and only some facilities conduct monitoring and make the results available to the Service (Cryan 2011, pp. 368–369). Additionally, if mortality occurs at a specific wind facility in a given year, it is reasonable to expect that mortality will occur throughout the operational life of the wind facility (approximately 20 years). Sustained annual mortality of individual northern long-eared bats at a particular wind facility could result in impacts to local populations.

There are three impacts of wind turbines that may explain proximate causes of bat fatalities, which include: (1) Bats collide with turbine towers; (2) bats collide with moving blades; or (3) bats suffer internal injuries (barotrauma) after being exposed to rapid pressure changes near the trailing edges and tips of moving blades (Cryan and Barclay 2009, p. 1331). Researchers have recently indicated that traumatic injury, including bone fractures and soft tissue trauma caused by collision with moving blades, is the major cause of bat mortality at wind energy facilities (Rollins *et al.* 2012, pp. 365, 368; Grodsky *et al.* 2011, p. 920). Grodsky *et al.* (2011, p. 924) suggested that these injuries can lead to an underestimation of bat mortality at wind energy facilities due to delayed lethal effects. However, the authors also noted that the surface and core pressure drops behind the spinning turbine blades are high enough (equivalent to sound levels that are 10,000 times higher in energy density than the threshold of pain in humans) to cause significant ear damage to bats flying near wind turbines (Grodsky *et al.* 2011, p. 924). Bats suffering from ear damage would have a difficult time navigating and foraging, as both of these functions depend on the bats' ability to echolocate (Grodsky *et al.* 2011, p. 924). While earlier papers indicated that barotrauma may also be responsible for a considerable portion of bat mortality at wind energy facilities (Baerwald *et al.* 2008, pp. 695–696), in a more recent study, researchers found only 6 percent of wind turbine killed bats at one site were possibly killed by barotrauma (Rollins *et al.* 2012, p. 367). In a separate study, Grodsky *et al.* (2011, p. 920 and 922) found that 74 percent of carcasses had bone fractures and more than half had mild to severe hemorrhaging in the middle or inner ears; thus it is difficult to attribute individual fatalities exclusively to either direct collision or barotrauma.

Wind energy development is rapidly increasing throughout the northern long-eared bat's range. Iowa, Illinois, Oklahoma, Minnesota, Kansas, and New York are within the top 10 States for wind energy capacity (installed megawatts) in the United States (AWEA 2013, unpaginated). There is a national movement towards a 20 percent wind energy sector in the U.S. market by 2030 (United States Department of Energy (US DOE)2008, unpaginated). Through 2012, wind energy has achieved its goals in installation towards the targeted 20 percent by 2030 (AWEA 2015, unpaginated). If the target is achieved, it would represent nearly a five-fold increase in wind energy capacity during the next 15 years (Loss *et al.* 2013, pp. 201–209). While locations of future wind energy projects are largely influenced by ever-changing economic factors and are difficult to predict, sufficient wind regimes exist to support wind power development throughout the range of the northern long-eared bat (US DOE 2015, unpaginated), and wind development can be expected to increase throughout the range in future years. Wind energy facilities have been constructed in areas within a large portion of the range of the northern long-eared bat, thus this species is exposed to the risk of turbine-related mortality. However, northern long-eared bats are rarely detected as mortalities, even in areas where they are known to be common on the landscape.

We conclude that there may be adverse effects posed by wind energy development to northern long-eared bats; however, there is no evidence suggesting effects from wind energy development itself has led to population-level declines in this species. Further, given the low mortality rates experienced and estimated, we believe northern long-eared bats are not as vulnerable to mortality from wind turbines as other species of bats (*e.g.,* hoary bat, silver-haired bat, red bat, big brown bat, little brown bat, and tricolored bat). However, sustained annual mortality of individual northern long-eared bats at a particular wind energy facility could result in negative impacts to local populations.

Climate Change

Our analyses under the Act include consideration of observed or likely environmental effects related to ongoing and projected changes in climate. As defined by the Intergovernmental Panel on Climate Change (IPCC), ''climate'' refers to average weather, typically measured in terms of the mean and variability of temperature, precipitation, or other relevant properties over time, and ''climate change'' thus refers to a change in such a measure that persists for an extended period, typically decades or longer, due to natural conditions (*e.g.,* solar cycles) or human-caused changes in the composition of the atmosphere or in land use (IPCC 2013, p. 1450). Detailed explanations of global climate change and examples of various observed and projected changes and associated effects and risks at the global level are provided in reports issued by the IPCC (2014 and citations therein); information for the United States at national and region levels is summarized in the National Climate Assessment (Melillo *et al.* 2014 entire and citations therein; see Melillo *et al.* 2014, pp. 28–45 for an overview). Because observed and projected changes in climate at regional and local levels vary from global average conditions, rather than using global scale projections we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher

resolution information that is more relevant to spatial scales used for analyses of a given species and the conditions influencing it (see Melillo *et al.* 2014, Appendix 3, pp. 760–763 for a discussion of climate modeling, including downscaling). In our analysis, we use our expert judgment to weigh the best scientific and commercial data available in our consideration of relevant aspects of climate change and related effects.

The unique life-history traits of bats and their susceptibility to local temperature, humidity, and precipitation patterns make them an early warning system for effects of climate change in regional ecosystems (Adams and Hayes 2008, p. 1120). Climate influences food availability, timing of hibernation, frequency and duration of torpor, rate of energy expenditure, reproduction, and rates of juvenile bat development (Sherwin *et al.* 2013, p. 178). Climate change may lead to warmer winters, which could lead to a shorter hibernation period, increased winter activity, and reduced reliance on the relatively stable temperatures of underground hibernation sites (Jones *et al.* 2009, p. 99). An earlier spring would presumably result in a shorter hibernation period and the earlier appearance of foraging bats (Jones *et al.* 2009, p. 99). An earlier emergence from hibernation may have no detrimental effect on populations if sufficient food is available (Jones *et al.* 2009, p. 99); however, predicting future insect population dynamics and distributions is complex (Bale *et al.* 2002, p. 6). Alterations in precipitation, stream flow, and soil moisture could alter insect populations and, therefore, food availability for bats (Rodenhouse *et al.* 2009, p. 250).

Climate change is expected to alter seasonal ambient temperatures and precipitation patterns across regions (Adams and Hayes 2008, p. 1115), which could lead to shifts in the range of some bat species (Loeb and Winters 2013, p. 107; Razgour *et al.* 2013, p. 1262). Suitable roost temperatures and water availability are directly related to successful reproduction in female insectivorous bats (Adams and Hayes 2008, p. 1116). Adams (2010, p. 2440) reported decreased reproductive success in female insectivorous bats in response to decreased precipitation. In contrast, Burles *et al.* (2009, p. 136) and Lucan *et al.* (2013, p. 154) reported decreased reproductive success in response to increased precipitation in little brown bats and Daubenton's bats (*Myotis daubentonii),* respectively. Annual precipitation in the northeast United States is projected to either remain stable or increase, although projections are highly variable (Frumhoff *et al.* 2007, p. 8). However, in comparison, Adams and Hayes (2008, p. 1120) predict an overall decline in bat populations in the western United States from reduced regional water storage caused by climate warming.

Warmer winter temperatures may also disrupt bat reproductive physiology. Northern long-eared bats breed in the fall, and spermatozoa are stored in the uterus of hibernating females until spring ovulation. If bats experience warmer hibernating conditions they may arouse prematurely, ovulate, and become pregnant (Jones *et al.* 2009, p. 99). Given this dependence on external temperatures, climate change is likely to affect the timing of reproductive cycles (Jones *et al.* 2009, p. 99), but making generalizations about the level of risk associated with changes in bat reproduction due to climate change is difficult (Sherwin *et al.* 2013, p. 176). Sherwin *et al.* (2013, p. 176) postulates that warmer climates may benefit female bats by causing earlier birth and weaning of young, allowing more time to mate and store fat reserves in preparation for hibernation. Research by Frick *et al.* (2010b, p. 133) supports this theory, whereby the authors showed giving birth earlier had significant fitness benefits, given that young born in early summer had a higher probability of surviving and breeding in their first year than pups born later in the summer.

The role of climate change in the spread of WNS is largely unknown. A shortened hibernation period and warmer winter temperatures may shorten exposure time and slow the spread of WNS. However, using three standard IPCC scenarios (Special Report: Emissions Scenarios (SRES) B1, least change in climate; A1B, intermediate change; and A2, most change), Maher *et al.* (2012, p. 6) showed accelerated spread of WNS under all scenarios relative to projections based on observed data.

Although we have information that suggests that climate change may affect the northern long-eared bat, we do not have evidence suggesting that climate change in itself has led to population declines; furthermore, the spread of WNS across the species' range is occurring rapidly, so discerning effects from climate change may be difficult.

Contaminants

Effects to bats from contaminant exposure have likely occurred and gone, for the most part, unnoticed in bat populations (Clark and Shore 2001, p. 204). Contaminants of concern to insectivorous bats like northern long-eared bats include organochlorine pesticides, organophosphate, carbamate and neonicotinoid insecticides, polychlorinated biphenyls (PCBs) and polybrominated diphenyl ethers (PBDEs), pyrethroid insecticides, and inorganic contaminants such as mercury (Clark and Shore 2001, pp. 159–214).

Detectable levels of organochlorine pesticides have been reported in northern long-eared bats (Eidels *et al.* 2007, p. 52). Organochlorine pesticides (*e.g.,* dichlorodiphenyltrichloroethane (DDT), chlordane) persist in the environment due to lipophilic (fat-loving) properties, and, therefore, readily accumulate within the fat tissue of bats. Because insectivorous bats have high metabolic rates, associated with flight and small size, their food intake increases the amount of organochlorines available for concentration in the fat (Clark and Shore 2001, p. 166). Because bats are long-lived, the potential for bioaccumulation is great, and effects on reproduction have been documented (Clark and Shore 2001, pp. 181–190). In maternity colonies, young bats appear to be at the greatest risk of mortality. This is because organochlorines become concentrated in the fat of the mother's milk and these chemicals continually and rapidly accumulate in the young as they nurse (Clark 1988, pp. 410–411).

In addition to indirect effects of organochlorine pesticides on bats via prey consumption, documented cases of direct effects involve application of pesticides to bats and their roosts. For example, when a mixture of DDT and chlordane was applied to little brown bats and their roost site, mortality from exposure was observed (Kunz *et al.* 1977, p. 478). Most organochlorine pesticides have been banned in the United States, and time trend analysis indicates that these pesticides have declined significantly over the 30 years since these compounds were restricted (Bayat *et al.* 2014, pp. 46–47).

Organochlorine pesticides have largely been replaced by organophosphate insecticides, which are generally short-lived in the environment and do not accumulate in food chains; however, risk of exposure is still possible from direct exposure from spraying or ingesting insects that have recently been sprayed but have not died, or both (Clark 1988, p. 411). Organophosphate and carbamate insecticides are acutely toxic to mammals. Some organophosphates may be stored in fat tissue and contribute to ''organophosphate-induced delayed neuropathy'' in humans (United States Environmental Protection Agency 2013, p. 44). Bats may lose their motor

coordination from direct application and are unlikely to survive in the wild in an incapacitated state lasting more than 24 hours (Plumb and Budde 2011, unpublished data). Northern long-eared bats may be exposed to organophosphate and carbamate insecticides in regions where methyl parathion is applied in cotton fields and where malathion is used for mosquito control (Plumb and Budde 2011, unpublished data). The organophosphate, chlorpyrifos, has high fat solubility and is commonly used on crops such as corn and soybeans (van Beelen 2000, p. 34 of Appendix 2; *http://water.usgs.gov/nawqa/pnsp/usage/maps/show_map.php?year=2009&map=CHLORPYRIFOS&hilo=L*).

Neonicotinoids have been found to cause oxidative stress, neurological damage and possible liver damage in rats, and immune suppression in mice (Kimura-Kuroda *et al.* 2011, p. 381; Duzguner and Erdogan 2012, p. 58; Badgujar *et al.* 2013, p. 408). Due to information indicating that there is a link between neonicotinoids used in agriculture and a decline in bee numbers, the European Union proposed a 2-year ban on the use of the neonicotinoids, thiamethoxam, imidacloprid, and clothianidin on crops attractive to honeybees, beginning in December of 2013 (Bergeson and Campbell PC, *http://www.lawbc.com/regulatory-developments/entry/proposal-for-restriction-of-neonicotinoid-products-in-the-eu/*).

The more recently developed ''third generation'' of pyrethroids have acute oral toxicities rivaling the toxicity of organophosphate, carbamate and organochlorine pesticides. These pyrethroids include: Esfenvalerate, deltamethrin, bifenthrin, tefluthrin, flucythrinate, cyhalothrin, and fenpropathrin (Mueller-Beilschmidt 1990, p. 32). Pyrethroids are increasingly used in the United States, and some of these compounds have very high fat solubility (*e.g.,* bifenthrin, cypermethrin) (van Beelen 2000, p. 34 of Appendix 2).

Like the organochlorine pesticides, PCBs and PBDEs are highly lipophilic and therefore readily accumulate in insectivorous bats. Measured concentrations of PCBs and PBDEs in little brown bats were high, in the parts-per-million range, in both WNS-infected and non-infected bats (Kannan *et al.* 2010, p. 617). High exposures to persistent organic pollutants can potentially be associated with various health effects, including immunosuppression, behavioral anomalies, and contaminant-induced enhancement of metabolic rate in bats (Kannan *et al.* 2010, p. 617). Outside of laboratory experiments, there is no conclusive evidence that bats have been killed by PCBs, although effects on reproduction have been observed (Clark and Shore 2001, pp. 192–194).

Northern long-eared bats forage on emergent insects and can be characterized as occasionally foraging over water (Yates and Evers 2006, p. 5), and, therefore, are at risk of exposure to bioaccumulation of inorganic contaminants (*e.g.,* cadmium, lead, mercury) from contaminated water bodies. Bats tend to accumulate inorganic contaminants due to their diet and slow means of elimination of these compounds (Plumb and Budde 2011, unpublished data). In Virginia, for example, the North Fork Holston River is a water body that was highly contaminated by a waterborne point source of mercury through contamination by a chlor-alkali plant. Based on findings from a pilot study for bats in 2005 (Yates and Evers 2006), there is sufficient information to conclude that bats from near-downstream areas of the North Fork Holston River have potentially harmful body burdens of mercury, although the effect on bats is unknown. Yates *et al.* (2014, pp. 46–49) collected over 2,000 tissue samples from 10 species of bats in the northeast United States. The highest mercury levels in fur and blood samples were detected in tri-colored, little brown, and northern long-eared bats. Divoll *et al.* (in prep) found that northern long-eared bats showed consistently higher mercury levels than little brown bats or eastern red bats sampled in Maine, which may be correlated with gleaning behavior and the consumption of spiders by northern long-eared bats. Bats recaptured during the study one or 2 years after their original capture maintained similar levels of mercury in fur year-to-year. Biologists suggest that individual bats accumulate body burdens of mercury that cannot be reduced once elevated to a certain threshold.

Exposure to holding ponds containing flow-back and produced water associated with hydraulic fracturing operations may also expose bats to toxins, radioactive material, and other contaminants (Hein 2012, p. 8). Cadmium, mercury, and lead are contaminants reported in hydraulic fracturing operations. Whether bats drink directly from holding ponds or contaminants are introduced from these operations into aquatic ecosystems, bats will presumably accumulate these substances and potentially suffer adverse effects (Hein 2012, p. 9).

A recent review on organic contaminants in bats by Bayat *et al.* (2014, pp. 40–52) ''suggests that bats today are exposed generally to lower contaminant concentrations, but that these can manifest in a range of sub-lethal neurological and physiological changes that may impact bat survival. Defining concentration endpoints for sub-lethal impacts, especially for the emerging contaminants, and linking these to effects on bat function, behavior or survival, and long term impacts on populations is limited.'' In summary, the best available data indicate that contaminant exposure may cause adverse effects to northern long-eared bats, but if population declines have occurred due to these factors, they have not been discernable.

Prescribed Burning

Eastern forest-dwelling bat species, such as the northern long-eared bat, likely evolved with fire management of mixed-oak ecosystems (Perry 2012, p. 182). A recent review of prescribed fire and its effects on bats (USFS 2012, p. 182) generally found that fire had beneficial effects on bat habitat. Fire may create snags for roosting and creates more open forests conducive to foraging on flying insects (Perry 2012, pp. 177–179), although gleaners such as northern long-eared bats may readily use cluttered understories for foraging (Owen *et al.* 2003, p. 355). Cavity and bark roosting bats, such as the northern long-eared, use previously burned areas for both foraging and roosting (Johnson *et al.* 2009a, p. 239; Johnson *et al.* 2010, p. 118). In Kentucky, the abundance of prey items for northern long-eared bats increased after burning (Lacki *et al.* 2009, p. 1170), and more roosts were found in post-burn areas (Lacki *et al.* 2009, p. 1169). Burning may create more suitable snags for roosting through exfoliation of bark (Johnson *et al.* 2009a, p. 240), mimicking trees in the appropriate decay stage for roosting bats. In contrast, a prescribed burn in Kentucky caused a roost tree used by a radio-tagged female northern long-eared bat to prematurely fall after its base was weakened by smoldering combustion (Dickinson *et al.* 2009, p. 56). Low-intensity burns may not kill taller trees directly but may create snags of smaller trees and larger trees may be injured, resulting in vulnerability (of the tree) to pathogens that cause hollowing of the trunk, which provides roosting habitat (Perry 2012, p. 177). Prescribed burning also opens the tree canopy, providing more canopy light penetration (Boyles and Aubrey 2006, p. 112; Johnson *et al.* 2009a, p. 240), which may facilitate faster development of juvenile bats

(Sedgeley 2001, p. 434). Although Johnson *et al.* (2009a, p. 240) found the amount of roost switching did not differ between burned and unburned areas, the rate of switching in burned areas of every 1.35 days was greater than that found in other studies (every 2 to 3 days) (Foster and Kurta 1999, p. 665; Owen *et al.* 2002, p. 2; Carter and Feldhamer 2005, p. 261; Timpone *et al.* 2010, p. 119).

Direct effects of fire on bats likely differ among species and seasons (Perry 2012, p. 172). Northern long-eared bats have been seen flushing from tree roosts shortly after ignition of prescribed fire during the growing season (Dickinson *et al.* 2009, p. 60). Fires of reduced intensity that proceed slowly allow sufficient time for roosting bats to arouse from sleep or torpor and escape the fire (Dickinson *et al.* 2010, p. 2200), although extra arousals from fire smoke could cause increased energy loss (Dickinson *et al.* 2009, p. 52). During prescribed burns, bats are potentially exposed to heat and gases; the roosting behavior of this species, however, may reduce its vulnerability to toxic gases. When trees are dormant, the bats are roosting in caves or mines (hibernacula can be protected from toxic gases through appropriate burn plans), and during the growing season, northern long-eared bats roost in tree cavities or under bark above the understory, above the area with the highest concentration of gases in a low-intensity prescribed burn (Dickinson *et al.* 2010, pp. 2196, 2200). Carbon monoxide levels did not reach critical thresholds that could harm bats in low-intensity burns at the typical roosting height for the northern long-eared bat (Dickinson *et al.* 2010, p. 2196); thus, heat effects from prescribed fire are of greater concern than gas effects on bats. Direct heat could cause injury to the thin tissue of bat ears and is more likely to occur than exposure to toxic gas levels during prescribed burns (Dickinson *et al.* 2010, p. 2196). In addition, fires of reduced intensity with shorter flame height could lessen the effect of heat to bats roosting higher in trees (Dickinson *et al.* 2010, p. 2196). Winter, early spring, and late fall generally contain less intense fire conditions than during other seasons and coincide with time periods when bats are less affected by prescribed fire due to low activity in forested areas. Furthermore, no young are present during these times, reducing the likelihood of heat injury to vulnerable young to fire (Dickinson *et al.* 2010, p. 2200). Prescribed fire objectives, such as fires with high intensity and rapid ignition in order to meet vegetation goals, must be balanced with the exposure of bats to the effects of fire (Dickinson *et al.* 2010, p. 2201). Currently, the Service and USFS strongly recommend not burning in the central hardwoods from mid- to late April through summer to avoid periods when bats are active in forests (Dickinson *et al.* 2010, p. 2200).

Bats that occur in forests are likely equipped with evolutionary characteristics that allow them to exist in environments with prescribed fire. Periodic burning can benefit habitat through snag creation and forest canopy gap creation, but frequency and timing need to be considered to avoid direct and indirect adverse effects to bats when using prescribed burns as a management tool. Adverse impacts to individual bats during the active season could be significantly reduced through development of appropriate burn plans that avoid and minimize heat production during prescribed burns. We conclude that there may be adverse effects posed by prescribed burning to individual northern long-eared bats; however, there is no evidence suggesting effects from prescribed burning itself have led to population declines.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

In the Midwest, rapid wind energy development is a concern with regard to its effect on bats (Baker 2011, pers. comm.; Kath 2012, pers. comm.). Due to the known impacts from wind energy development, in particular to listed (and species currently being evaluated to determine if listing is warranted) bird and bat species in the Midwest, the Service, State natural resource agencies, and wind energy industry representatives are developing the MSHCP. The planning area includes the Midwest Region of the Service, which includes all of the following States: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The MSHCP would allow permit holders to proceed with wind energy development, which may result in ''incidental'' taking of a listed species under section 10 of the Act, through issuance of an incidental take permit (77 FR 52754; August 30, 2012). Currently, the northern long-eared bat is included as a covered species under the MSHCP. The MSHCP will address protection of covered species through avoidance, minimization of take, and mitigation to offset ''take'' (*e.g.,* habitat preservation, habitat restoration, habitat enhancement) to help ameliorate the effect of wind development (77 FR 52754; August 30, 2012). In some cases, the USFS has agreed to limit or restrict burning in the central hardwoods from mid- to late April through summer to avoid periods when bats are active in forests (Dickinson *et al.* 2010, p. 2200).

Summary of Factor E

Using the best scientific and commercial data available, we have identified a number of natural or manmade factors that may have direct or indirect effects on the continued existence of northern long-eared bats.

Wind energy facilities have been built throughout a large portion of the range of northern long-eared bats, and have been found to cause mortality of northern long-eared bats. While mortality estimates vary between sites and years, sustained mortality at particular sites could result in negative impacts to local populations. Overall, northern long-eared bats are rarely detected as mortalities at wind facilities; however, there is a great amount of uncertainty associated with extrapolating detected northern long-eared bat mortalities to total bat mortalities. Also, wind energy development within the species' range is projected to continue to increase in future years.

Climate change may also affect this species, as northern long-eared bats are particularly sensitive to changes in temperature, humidity, and precipitation. Impacts from climate change may also indirectly affect the northern long-eared bat due to changes in food availability, timing of hibernation, and reproductive cycles, along with other factors, all of which may contribute to a shift in suitable habitat.

Environmental contaminants, in particular insecticides, pesticides, and inorganic contaminants, such as mercury and lead, may also have detrimental effects on northern long-eared bats. Contaminants may bioaccumulate (become concentrated) in the tissues of bats, potentially leading to a myriad of sublethal and lethal effects.

Northern long-eared bats likely evolved with fire in their habitat, and thus may benefit from fire-created habitat. However, there are potential negative effects from prescribed burning, including direct mortality. Therefore, when using prescribed burning as a management tool, fire frequency, timing, location, and intensity should all be considered in relation to the northern long-eared bat.

There is currently no evidence that these natural or manmade factors would have significant population-level effects on the northern long-eared bat when

considered alone. However, these factors may have a cumulative effect on this species when considered in concert with WNS, as this disease has led to dramatic northern long-eared bat population declines (see Factor C discussion, above). While there have been conservation efforts attempting to reduce the potential mortality of northern long-eared bats, particularly involving wind energy development and prescribed burning, these factors may still affect this species when considered cumulatively with white-nose syndrome (discussed below, in ''Cumulative Effects from Factors A through E'').

Cumulative Effects From Factors A Through E

WNS (Factor C) is the primary factor affecting the northern long-eared bat and has led to dramatic and rapid population-level effects on the species. WNS is the most significant threat to the northern long-eared bat, and the species would likely not be imperiled were it not for this disease. However, although the effects on the northern long-eared bat from Factors A, B, and E, individually or in combination, do not have significant effects on the species, when combined with the significant population reductions due to white-nose syndrome (Factor C), they may have a cumulative effect on this species at a local population scale.

Summary of Changes From the Proposed Listing Rule

Based on our review of the public comments, comments from other Federal and State agencies, peer review comments, issues raised at the public hearing, and new relevant information that has become available since the October 2, 2013, publication of the proposed rule, we have reevaluated our proposed listing rule and made changes as appropriate. Other than minor clarifications and incorporation of additional information on the species' biology and populations, this determination differs from the proposal in the following ways:

(1) Based on our analyses of the potential threats to the species, we have determined that the northern long-eared bat does not meet the definition of an endangered species, contrary to our proposed rule published on October 2, 2013 (78 FR 61046).

(2) Based on our analyses, we have determined that the species meets the definition of a threatened species. Therefore, on the effective date of this final listing rule (see **DATES**, above), the species will be listed as a threatened species in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h).

(3) We have further refined the estimated timeframe during which Pd (the fungus that causes white-nose syndrome) is expected to spread throughout the range of the northern long-eared bat.

(4) We have expanded the discussion of white-nose syndrome and the effects of white-nose syndrome on the northern long-eared bat under Factor C.

(5) We have included additional (most recent available) survey data for the species in the *Distribution and Relative Abundance* section, above.

Summary of Comments and Recommendations on the Proposed Listing Rule

In the proposed listing rule published on October 2, 2013, we requested that all interested parties submit written comments on the proposal by December 2, 2013. Following that first 60-day comment period, we held four additional public comment periods (see 78 FR 72058, December 2, 2013; 79 FR 36698, June 30, 2014; 79 FR 68657, November 18, 2014; 80 FR 2371, January 16, 2015) totaling an additional 180 days for public comments, with the final comment period closing on March 17, 2015. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposed listing. Newspaper notices inviting general public comment were published in multiple newspapers throughout the range of the species. We received a request for a public hearing; we held a public hearing on December 2, 2014, in Sundance, Wyoming. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below. Comments pertaining to the proposed 4(d) rule will be addressed in the final 4(d) rule, and are not included here.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven knowledgeable individuals with scientific expertise that included familiarity with the northern long-eared bat and its habitat, biological needs, and threats. We received responses from four of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of the northern long-eared bat. The peer reviewers generally concurred with our methods and conclusions in the proposed listing rule, and provided additional information, clarifications, and suggestions to improve the final listing rule. Peer reviewer comments are addressed in the following summary and are incorporated into the final rule as appropriate. Specific recommended edits were added under the corresponding section in the final listing rule.

(1) *Comment:* Peer reviewers (and other commenters) concurred with the Service's assessment that factors other than white-nose syndrome are not believed to be contributing to the current decline of the species rangewide. However, they believed that there could be localized impacts from these other stressors and that cumulative impacts may result from these other factors, in addition to white-nose syndrome, due to a diminished population. Several public commenters further stressed that these additional threats will become proportionately more harmful to the species after the onset of WNS, and protection from these other threats may affect whether the species can stabilize post-WNS.

Our Response: WNS is the most significant threat to the northern long-eared bat, and the species would likely not be imperiled were it not for this disease. Thus, the Service proposed listing the northern long-eared bat due primarily to the impacts of WNS. As stated by commenters, other activities may impact northern long-eared bats as well; however, we conclude that these factors are not believed to be independently impacting the species rangewide. However, although the effects on the northern long-eared bat from Factors A, B, and E, individually or in combination, do not have significant effects on the species, when combined with the significant population reductions due to white-nose syndrome (Factor C), they may have a cumulative effect on this species at a local population scale.

(2) *Comment:* Peer reviewers encouraged the Service to conduct a more extensive literature review. Other commenters also recommended a more extensive literature search and provided citations for relevant literature not included in the proposed listing rule. One reviewer suggested we review literature on the species' habitat requirements, and suggested that the species is more flexible than described in the proposed listing rule. One reviewer recommended, in particular, a more thorough review of literature related to bat community ecology or bat response to forest management where northern long-eared bats are one of many species examined.

Our Response: We have reviewed the literature provided by commenters and incorporated this information into this final listing rule, where appropriate. We also conducted further literature searches to determine if there was additional available literature relevant to the species' biology or the factors affecting its status, and incorporated that information into this final listing rule. In particular, we updated sections with the most recent literature pertaining to the predominant threat to the species, white-nose syndrome, and the resulting impact of the disease on the northern long-eared bat.

(3) *Comment:* One peer reviewer stated that it is critical to point out that these bats day-roost in an ephemeral resource (snags and cavity-trees), and, therefore, they are adapted to handle the dynamic nature of roost longevity and loss of roosts from disturbance in temperate forest systems.

Our Response: Northern long-eared bats are flexible in their tree species roost selection, and roost trees are an ephemeral resource; therefore, the species would be expected to tolerate some loss of roosts provided suitable alternative roosts are available. However, the impact of loss of roosting or foraging habitat within northern long-eared bat home ranges is expected to vary, depending on the scope of removal. See the ''Summer Habitat'' section under *Factor A,* above, for a more detailed discussion.

(4) *Comment:* One peer reviewer commented that the literature cited that is posted at *http://www.regulations.gov* was not complete, with several references in the text not appearing in the literature cited section, and many of the unpublished reports that are cited are unobtainable.

Our Response: We corrected this and added these missing references, in addition to any new references used in this final listing rule, to the literature cited list. A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The Act and our regulations do not require us to use only peer-reviewed literature, but instead require us to use the best scientific data available in a listing determination. We used information from many different sources, including articles in peer-reviewed journals, scientific status surveys and studies completed by qualified individuals, Master's thesis research that has been reviewed but not published in a journal, other unpublished governmental and nongovernmental reports, reports prepared by industry, personal communication about management or other relevant topics, conservation plans developed by States and counties, biological assessments, other unpublished materials, experts' opinions or personal knowledge, and other sources. You may request a copy of many of these unpublished reports by contacting the Service's Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Unpublished reports that we have used in making our listing determination include survey information that has been received from State agencies, which the public can request directly from these State agencies.

(5) *Comment:* Peer reviewers agreed that white-nose syndrome likely will spread throughout the range of the northern long-eared bat. One peer reviewer suggested that the rate of spread (through bat-to-bat contact) may slow in western areas, where hibernacula are not as abundant. ''Barriers provided by the Great Lakes and isolation from major cave areas in North America are presumably the reasons that the fungus has not yet reached the populations in northern Wisconsin and northern Michigan, and the lower density of hibernacula in the Great Plains may slow the spread in a similar way. However, there is no biological reason to believe that the disease will not spread throughout the entire range of the species.''

Our Response: As stated in this final listing rule, based on past and current rates of spread of the disease, we agree that the disease will likely spread throughout the range of the species. Regarding a slowing rate of spread in western areas due to fewer hibernacula, WNS has been confirmed at numerous hibernacula that are not caves or mines, including culverts, bunkers, forts, tunnels, excavations, quarries, and even houses. Since this peer review was submitted, white-nose syndrome has been documented in Wisconsin and the Upper Peninsula of Michigan. The spread of white-nose syndrome was addressed in more detail in our Factor C discussion in the section titled, ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' above.

(6) *Comment:* Peer reviewers noted that, in the proposed listing rule, we did not stress the importance of the northern long-eared bat's sociality during the summer months, and suggested a further explanation on how social structures be maintained if populations have declined dramatically due to white-nose syndrome is needed. These peer reviewers further questioned if the species will be able to recover, even if white-nose syndrome is curtailed.

Our Response: Similar to other myotid bats (*e.g.,* Indiana bat, little brown bat), the northern long-eared bat is considered a highly social species, with females forming maternity colonies during the summer months. Peer reviewers expect that white nose-syndrome will reduce population sizes to a level that these groups may not be able to be maintained. Whether a species is ultimately recoverable is not something we consider when listing species; we are obligated to list species under the Act if they meet the definition of an endangered or a threatened species. We will consider what actions might be necessary to recover the species when we begin recovery planning and implementation. See our Factor C discussion in the section titled, ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' above, for a more detailed discussion of this topic.

(7) *Comment:* One commenter stated that although the proposed listing rule discusses the regulatory mechanisms that several States have employed to reduce the negative impact of wind development on this species, it fails to discuss potential regulatory efforts that could be controlled at the State level, including the impact of highway construction, forest management, and pest control regulations.

Our Response: In general, we devoted most effort to identifying conservation efforts that have been taken to reduce the impact of the predominant threat to the species: White-nose syndrome. We acknowledge that additional conservation efforts are underway in many arenas and they may address other cumulative threats.

(8) *Comment:* One peer reviewer disagreed with the assessment in the proposed listing rule that the species clusters and, therefore, is at greater risk of bat-to bat transmission of Pd while in hibernation. This reviewer stated, at least in Kentucky caves, that the species is most often seen hibernating alone or in very small groupings.

Our Response: We corrected this in this final listing rule. The northern long-eared bat occasionally can be found in clusters with other bats, but typically is found roosting singly during hibernation. Certain life-history characteristics of the northern long-eared bat (*e.g.,* proclivity to roost in areas with increased humidity of hibernacula, longer hibernation time period) are believed to increase the species' susceptibility to white-nose syndrome in comparison to other cave

bat species. Furthermore, of the six species with known mortality from WNS, the northern long-eared bat has demonstrated the greatest declines, based on winter count data. See our Factor C discussion in the section titled, ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' above, for a more detailed discussion.

(9) *Comment:* One reviewer stated that understanding the extent of the impact to northern long-eared bats remains difficult due to the behavior of the species during the winter, which includes movement between hibernacula, particularly during swarming and staging periods, and the ability of the species to hibernate in cracks and crevices, making it difficult to develop population estimates for winter counts.

Our Response: Despite the difficulties in observing or counting northern long-eared bats, winter hibernacula counts are the recommended method, and the only method with enough history to assess trends over time, for monitoring northern long-eared bats. Hibernacula surveys are considered the best available data for cave-dwelling bats in general. However, in recognition of the limitations of these data, we generally do not use the available hibernacula counts to estimate northern long-eared bat population size. Instead, we use the hibernacula data to understand and estimate population trends for the species. The relative difficulty of observing northern long-eared bats during hibernacula surveys should be consistent from year to year, and these data can be used to estimate relative change in numbers and indicate if the species is increasing or decreasing in number in those hibernacula. Thus, the total data available for known northern long-eared bat hibernacula can yield an individual site and cumulative indication of species population trend; the declines estimated at hibernacula are also corroborated by declines in acoustic records and mist-net captures in summer.

State Agency Comments

(10) *Comment:* State fish and wildlife management agencies (Montana, Louisiana, and Tennessee) commented that the listing of the northern long-eared bat should be limited to the portions of the range where decline has been documented. Another State (Wyoming) commented that there is insufficient data to warrant listing of the northern long-eared bat at a national level given the absence of white-nose syndrome in much of its range.

Our Response: Decisions under the Act cannot be made on a State-by-State basis, but at the species, subspecies, or distinct population segment (DPS) level. For the northern long-eared bat, we have determined that the species warrants listing as a threatened species throughout its range based on current threats (primarily due to WNS) and how those threats are likely to impact the species into the future. (See our response to Comment 36 for more information.)

White-nose syndrome or Pd have been confirmed in 28 States of the northern long-eared bat's 37-State (plus the District of Columbia) range. The species' range only extends into a small area in some of the States that remain uninfected with white-nose syndrome to date. Information provided to the Service by a number of State agencies and all models concerning the spread of white-nose syndrome demonstrates that white-nose syndrome will continue to spread throughout the range of the northern long-eared bat. Furthermore, based on the average rate of spread to date, Pd can be expected to occur throughout the range of the northern long-eared bat in an estimated 8 to 13 years (see our Factor C discussion in the section titled, ''White-nose Syndrome,'' above). Thus we have determined that the northern long-eared bat is threatened throughout its entire range.

(11) *Comment:* Several State and other commenters stated that the species should be listed as threatened rather than endangered for a variety of reasons: It would provide the Service with a better opportunity to protect the species from white-nose syndrome; we lack understanding of white-nose syndrome in the warmer regions with higher cave temperatures and shorter hibernation periods; a threatened status would allow for potential issuance of a 4(d) rule, which would allow the Service to implement regulations that are necessary and advisable to conserve the species, due to the large geographic size of the northern long-eared bat's range and the habitat variability within the large range; and a belief that endangered status is premature until more information is available.

Our Response: For the reasons stated in the Determination section of this final listing rule, the Service has determined that the northern long-eared bat is a threatened species, rather than an endangered species. Please see our response to other comments, which address the reasons specified by commenters for listing the species as threatened rather than endangered.

(12) *Comment:* One state commenter did not recommend a specific status for the species, but found that the species is not in danger of extinction in the immediate future, but could become so in the future.

Our Response: As explained in the Determination section of this final listing rule, although WNS is predicted to spread throughout the range of the species, in the currently uninfected areas we have no evidence that northern long-eared bat numbers have declined, and the present threats to the species in those areas are relatively low. Thus, because the fungus that causes WNS (Pd) may not spread throughout the species' range for another 8 to 13 years, because no significant declines have occurred to date in the portion of the range not yet impacted by the disease, and because some bats persist many years later in some geographic areas impacted by WNS (for unknown reasons), we conclude that the northern long-eared bat is not currently in danger of extinction throughout all of its range. However, because Pd is predicted to continue to spread, we also determine that the northern long-eared bat is likely to be in danger of extinction within the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we are listing the northern long-eared bat as a threatened species under the Act.

(13) *Comment:* Several States (Kentucky, Georgia, and Missouri) mentioned that, at the time they submitted their comments, there had not been any decline detected in northern long-eared bat population numbers. Specifically, Kentucky, and Georgia stated that the species is still commonly captured during summer surveys, even following white-nose syndrome confirmation in the State. Kentucky comments stated that the species' population in the State does not seem to be susceptible to white-nose syndrome.

Our Response: No decline has been documented in Georgia, Kentucky, or Missouri to date. However, mortality due to white-nose syndrome has been documented in cave bats in all four States, and mortality in northern long-eared bats has been documented in Kentucky and Missouri. Also, historically, there have been small numbers of northern long-eared bats found in hibernacula in these States; therefore, it is challenging to detect population changes based on hibernacula survey data alone in these States. Summer surveys, where available, often show a lower decline than corresponding hibernacula data in general. These differences likely stem from a combination of different survey techniques, differential influence of white-nose syndrome in the summer versus winter northern long-eared bat

populations, and also the likelihood that the summer data do not reflect northern long-eared bat populations as well as the winter data, given the methods and locations from which they were derived. Although there may not be a decline in summer populations observed to date in these States, mortality has been documented, which indicates the species is susceptible to the disease in these States.

(14) *Comment:* Several State commenters (Oklahoma and Midwest Association of Fish and Wildlife Agencies (MAFWA) letter) mentioned that in the proposed listing rule, the Service described different regions of the northern long-eared bat's range as separate populations and the commenter interpreted that to mean each population was a ''subpopulation.''

Our Response: We removed ''population'' from this section of the rule to address any confusion. For the purposes of organization, the northern long-eared bat's range in the United States is discussed in four parts: eastern range, Midwest range, southern range, and western range. Separating the range of the bat is not meant to imply that there are distinct or separate ''subpopulations'' of the species.

(15) *Comment:* State and public commenters stated that white-nose syndrome research will be impacted if the northern long-eared bat is listed, as treatments cannot be tested on listed species.

Our Response: Under section 4 of the Act, a species shall be listed if it meets the definition of an endangered or threatened species because of any (one or more) of the five factors (threats), considering solely best available scientific and commercial data. Based on our analysis of the five factors, we conclude the northern long-eared bat meets the definition of a threatened species, particularly considering the effects of WNS on the species. Research that is conducted for the purpose of recovery of a species is an activity that can be authorized under section 10 of the Act, normally referred to as a recovery permit, or can be conducted by certain State conservation agencies by virtue of their authority under section 6 of the Act. White-nose syndrome research will be important for recovery of the species, and thus the Service will continue to support such actions.

(16) *Comment:* Both State and public commenters stated that the species is more common in southeast States, Kentucky and Tennessee in particular, than was depicted in the proposed listing rule. The State of Tennessee further questions if the historical core of the species' range is in the southern Appalachians, rather than the northeast, and commented that ''Tennessee has over 9,000 caves and less than 2 percent of those have been surveyed, which could mean that there are many more locations within the [S]tate that have significant numbers of [northern long-eared bats].''

Our Response: The Act requires us to make a determination using the best available scientific and commercial data in our review of the status of the species. In the proposed listing rule, we used the best available data at the time, which did not show the species to be as common, particularly in summer surveys. Based on more thorough data provided since the October 2, 2013, proposed rule (*e.g.,* summer survey data and winter hibernacula counts, peer reviewer comments), we have since learned the species may have been more commonly encountered, historically in Kentucky and Tennessee. We have corrected this in the final listing rule within the ''Southern Range'' section of the *Distribution and Relative Abundance* discussion, above. With regard to the potential for additional unsurveyed hibernacula in Tennessee, this was noted in the *Distribution and Relative Abundance* discussion, above. Also, there is no reason to believe that white-nose syndrome will not reach bat hibernacula simply because these sites are not monitored. Because we have documented consistently that northern long-eared bat declines are severe once white-nose syndrome is confirmed in a site, it is reasonable to expect that northern long-eared bat declines are similar at sites that are not or cannot be monitored.

(17) *Comment:* Two States (Minnesota and Missouri) and several public commenters requested that, if the species is listed, they be included as stakeholders in designating critical habitat and developing a recovery plan and best management plans.

Our Response: The Service appreciates the interest expressed by these commenters in being involved as stakeholders and welcomes all interested parties to be involved as potential stakeholders. We will work with stakeholders through recovery planning to identify areas that would aid in recovery of this species, and determine appropriate actions to take. The Service understands the importance of stakeholder participation and support in recovery of the northern long-eared bat and will continue to work with all stakeholders to this end.

(18) *Comment:* Several commenters, through a single letter produced by the Northeast Association of Fish and Wildlife Agencies, stated that known hibernacula containing northern long-eared bats are plentiful in many States, with 89 known in New York and 119 in Pennsylvania alone.

Our Response: Although there are a large number of known hibernacula that were historically used by northern long-eared bats, there are currently few, if any, individuals found during hibernacula surveys (post-WNS) in Pennsylvania and New York. Please refer to the *Distribution and Relative Abundance* section of this final listing rule, which discusses the current status of the species in these two States.

(19) *Comment:* Several States provided information on current and past conservation efforts that may benefit the northern long-eared bat. Also, other public comments noted that State, Federal, and private conservation efforts should be more thoroughly reviewed and included in the final listing rule. Specifically, many commenters mentioned that more weight should have been given to the 2008 white-nose syndrome plan, State white-nose syndrome plans, white-nose syndrome workshops, and State agency efforts in survey and white-nose syndrome research efforts.

Our Response: Information provided to us on additional conservation efforts has been added to the conservation efforts discussion under Factors A and C, above. It should be noted, however, that although recommendations set forth in these documents (*e.g.,* 2008 white-nose syndrome plan, State white-nose syndrome plans), if followed, may help reduce human-aided spread of white-nose syndrome, the efforts outlined in these plans have not yet identified a method by which WNS can be halted or its impacts reduced. Also, the white-nose syndrome national plan represents guidance that is not strictly enforced by any agency. Thus, although these plans will prepare management agencies to act to stop WNS should a viable option be presented, their ability to halt WNS is not guaranteed.

(20) *Comment:* Many States in the Northeast stated that white-nose syndrome continues to impact the northern long-eared bat in their respective States and have witnessed post-WNS confirmation of mortality and severe declines. Vermont, New Hampshire, and Maine all commented that the species was considered a common species in the State prior to white-nose syndrome confirmation and is now considered rare.

Our Response: Data received during data requests sent to the States corroborate these declines due to white-nose syndrome cited by commenters. This information is presented in

Distribution and Relative Abundance (in the ''Eastern Range'' and ''Southern Range'' sections) within the Background section of this final listing rule.

(21) *Comment:* One State questioned what recovery actions would need to be taken to stop the spread of white-nose syndrome throughout the northern long-eared bat's range.

Our Response: Recovery actions will be decided upon during recovery planning, after the species is listed. Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress.

(22) *Comment:* One State commented that not all white-nose syndrome spread models are in agreement on how the disease will spread. They cited a model presented at the White-nose syndrome Workshop in 2012 (Puechmaille 2012), and indicated that this model suggested that the spread and impacts of the disease presented in the proposed listing rule were significantly overestimated.

Our Response: The Puechmaille model, cited by the commenter, has been presented in evolving forms at the past several annual White-nose syndrome Workshops. The type of model used by Puechmaille may be useful in predicting suitable habitat for WNS, but it is not sufficient to predict unsuitable habitat. Further, this model cannot be used to predict spread of WNS. Given the uncertainties of the Puechmaille model (as identified by the author), we did not consider this model in making inferences about white-nose syndrome (or Pd) spread dynamics or population-level impacts to the northern long-eared bat.

(23) *Comment:* One State commenter agreed with the statement offered in the proposed listing rule that there is no information to indicate that there are areas within the species' range that will not be impacted by white-nose syndrome. Life-history information, as well as what we currently know about the disease, suggests northern long-eared bats exhibit low resiliency due to their extreme susceptibility to the disease and their low reproductive rates.

Our Response: Information provided to the Service by a number of State agencies confirms the likelihood of white-nose syndrome spreading throughout the range of the northern long-eared bat. White-nose syndrome or Pd are now detected in 28 States and 5 Canadian provinces, all of which are in the range of the species. Pd has spread over 1,000 miles (1,609 km) from the primary site of detection in New York to western Missouri, northern Minnesota, and as far south as Alabama, Arkansas, Georgia, and Mississippi. Furthermore, although there is some variation in spread dynamics and the impact of WNS on bats when it arrives at a new site, no information suggests that any site would be unsusceptible to the arrival of Pd. Given the appropriate amount of time for exposure, WNS appears to have had similar levels of impact on northern long-eared bats everywhere the species has been documented with the disease. Therefore, absent direct evidence to suggest that some northern long-eared bats that encounter Pd do not contract WNS, available information suggests that the species will be impacted by WNS everywhere in its range. See our Factor C discussion in the section titled, ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' above, for more detailed information.

(24) *Comment:* Comments from Oklahoma stated that the northern long-eared bat is commonly captured in the counties where it occurs in the State, and survey results indicate the northern long-eared bat population throughout the southwestern portion of the species' range does not need protection under the Act at this time.

Our Response: We have incorporated information provided on the species' status for the northern long-eared bat in Oklahoma in the *Distribution and Relative Abundance* section of this final listing rule. As stated in response to another comment, decisions under the Act cannot be made on a State-by-State basis, but at the species, subspecies, or DPS level. When a species is listed, we work with all of our partners to develop and implement practical solutions to conserve and protect the species while enabling on-the-ground projects to move forward. The definition of ''species'' under the Act includes distinct population segments. For a DPS to be identified it must be markedly separated from other populations as a consequence of physical, physiological, ecological, or behavioral factors. It is unlikely, and we have no evidence, that a State boundary would separate one State's northern long-eared bat population from northern long-eared bats in adjacent States.

(25) *Comment:* One commenter stated that more State-specific data are needed considering the ambiguity and divergence across the range of the northern long-eared bat.

Our Response: The Act requires us to make a determination using the best available scientific and commercial data after conducting a review of the status of the species. In 2014, we requested additional survey data (hibernacula and summer) from all of the States within the range of the species (and the District of Columbia) and received information from the majority of States. We have added this updated information to the *Distribution and Relative Abundance* section of this final listing rule.

(26) *Comment:* Several commenters stated that hibernacula survey data are too unreliable to base the listing decision on for the northern long-eared bat because northern long-eared bats are often overlooked in winter surveys due to their cryptic nature and the fluctuation of winter numbers, and that rather the Service should base its listing decision on summer survey data. Further, some commenters stated that the Service did not compile and review complete summer data sets maintained by State agencies.

Our Response: We agree that northern long-eared bats are often difficult to observe during winter hibernacula surveys due to their tendency to roost deep in cracks and crevices within hibernacula. Despite the difficulties in observing or counting northern long-eared bats, winter hibernacula colony counts are the recommended method, and the only method with enough history to assess trends over time, for monitoring northern long-eared bats, and hibernacula surveys are considered the best available data for cave-dwelling bats in general. However, in recognition of the limitations of these data, we do not use the available hibernacula counts to estimate northern long-eared bat population size. Instead we use the hibernacula data to understand and estimate population trends for the species. The relative difficulty of observing northern long-eared bats during hibernacula surveys should be consistent from year to year, and these data can be used to estimate relative change in numbers and indicate if the species is increasing or decreasing in number in those hibernacula. Thus, the total data available for known northern long-eared bat hibernacula can yield an individual site and cumulative indication of species population trend; furthermore, declines estimated at hibernacula are corroborated by

declines in acoustic records and net captures in summer.

In 2014, we requested all available hibernacula and summer survey data from all State fish and wildlife agencies within the range of the species and received information from the majority of States. We also requested information from States while developing the proposed listing rule. All available information at the time was included in the proposed listing rule. The majority of long-term summer monitoring estimates corroborates the trends observed in hibernating colonies. Although it is important to include all available relevant summer data, summer data likely do not reflect northern long-eared bat populations as well as the winter data, given the variability in methods and locations from which they were derived. Although we acknowledge uncertainties in both summer and winter northern long-eared bat data, we believe that the winter data, at this time, provide a more reliable estimate of population trends. The *Distribution and Relative Abundance* section of this final listing rule includes the most recent data received from States within the species' range.

(27) *Comment:* Commenters stated that the Service is making an assumption that white-nose syndrome will spread throughout the range of the northern long-eared bat. One commenter stated that bat experts do not know with any degree of certainty how WNS affects bats, how it is transmitted, how quickly or extensively it will spread, or how it might be controlled. These commenters stated that these uncertainties in white-nose syndrome's spread make it impossible to forecast how the disease will spread and impact the species in different areas throughout its range.

Our Response: The question of if and when white-nose syndrome will spread throughout the range of the species has been considered extensively by the Service and its white-nose syndrome coordinators. Information provided to the Service by a number of State agencies demonstrates the likelihood of white-nose syndrome spreading throughout the range of the northern long-eared bat. White-nose syndrome or Pd is now detected in 28 States and 5 Canadian provinces, all of which are in the range of the species. From initial detection of white-nose syndrome in the winter of 2006–2007, Pd has spread over 1,000 miles (1,690 km) from the primary site of detection in the State of New York to western Missouri, northern Minnesota, and as far south as Alabama, Arkansas, Georgia, and Mississippi. All models we have consulted concerning the spread of white-nose syndrome predict the disease or Pd will continue to spread. As mentioned under our Factor C discussion in the section titled, ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' above, models that provide estimates of the timing of spread predict the disease will cover the entirety of the species' range between 2 and 40 years. However, these models all have significant limitations for predicting timing of spread, and in many instances have overestimated the time white-nose syndrome would arrive in currently uninfected counties by as much as 45 years.

As for how white-nose syndrome affects bats, how it is transmitted, and how it may be controlled, there has been a significant amount of research completed that has provided insight into these questions. Please see our Factor C discussion in the section titled, ''White-nose Syndrome,'' above, for a more detailed discussion.

(28) *Comment:* Several commenters, through a single letter produced by MAFWA, stated that recent survey data from Pennsylvania, a State amongst the hardest hit by WNS, indicate that hibernacula surveys may be overestimating the decline in northern long-eared bat numbers. A large 2013 sample of summer mist-netting shows that northern long-eared bat captures per unit effort (over 178,000 square-meter mist-net hours in 2001–2007; over 500,000 in 2013) remain at 24 percent of the level observed pre-WNS. In contrast, hibernacula surveys in Pennsylvania during the same time period show a 99 percent decline in northern long-eared bat observations. ''These results clearly demonstrate the significant disparity between the prevalence of northern long-eared bats recorded in hibernacula surveys and in summer surveys (Turner 2014, pers. comm.).''

Our Response: Numerous counties in western Pennsylvania were not confirmed with WNS until 2012, possibly attributable to geographic barriers that hinder movements of bats between eastern and western parts of the State (Miller-Butterworth *et al.* 2014). Nevertheless, a 76 percent decline in summer captures of northern long-eared bat (standardized for effort) represents a severe decline in the population over the past 7 years. These summer monitoring estimates corroborate the severe declines observed in hibernating colonies. Furthermore, summer monitoring in Virginia from 2009 to the present revealed that declines in northern long-eared bats were not observed by VDGIF until 2 years after the severe declines were observed during winter and fall monitoring efforts in the State (Reynolds 2012, pers. comm.). Therefore, the assertion that the difference between winter estimates (99 percent decline in count) and summer estimates (76 percent decline in captures) in Pennsylvania represents a significant disparity in the estimated impact of WNS in the State is premature and inconclusive in the context of the health of northern long-eared bat populations in Pennsylvania. Furthermore, summer monitoring in Pennsylvania reveals that declines in northern long-eared bat captures continued in 2014.

We agree that there are differences between summer and winter data for northern long-eared bat. Specifically, that summer data, where available, often show a lower decline than corresponding hibernacula data. We conclude that these differences likely stem from a combination of different survey techniques, differential influence of WNS in the summer versus winter northern long-eared bat populations, and also the likelihood that the summer data do not reflect northern long-eared bat populations as well as the winter given the methods and locations from which they were derived. Although we acknowledge uncertainties in both summer and winter northern long-eared bat data, we conclude that the winter data, at this time, provide a more reliable estimate of population trends.

(29) *Comment:* Comments from MAFWA stated that only a small proportion of known cave and mine hibernacula across the species' range have been surveyed or monitored for the northern long-eared bat. For example, ''Tennessee has over 9,000 caves and less than 2 percent of those have been surveyed, which could mean that there are many more locations within the State that have significant numbers of northern long-eared bat'' (TWRA 2014). The commenter stated that this is particularly true for many areas of Canada (COSEWIC 2013) and the central and western States where surveys of bat hibernacula are very limited.

Our Response: These are accurate statements. Additional counties in Tennessee have been confirmed with WNS each year since 2010. There is no reason to believe that WNS will not reach bat hibernacula simply because these sites are not monitored. We have several examples of hibernacula that were only identified after WNS was transmitted into the area and dead and dying bats were found on the landscape. Because we have seen consistently that northern long-eared bat declines are severe once WNS is confirmed in a site, it is reasonable to expect that northern long-eared bat declines are similar at

sites that are not or cannot be monitored. In 103 hibernacula throughout the East, 68 percent now have zero northern long-eared bats observed in winter surveys. An additional 24 percent have declined by more than 50 percent.

(30) *Comment:* MAFWA commented that recent research into slowing the spread of WNS has documented, in a laboratory setting, that Pd spores can be killed by *Rhodococcus rhodochrous* DAP96253 (RRDAP). They suggest that this potential treatment may increase bat survival and allow the northern long-eared bat to adapt to the presence of WNS.

Our Response: As noted by the States in this comment, strategies to slow the spread of WNS are in various early stages of development in the laboratory setting. Promising treatments, including RRDAP and others, are being considered for field trials. However, considerably more research and coordination is needed to address the safety and effectiveness of any treatment proposed for field use and to meet regulatory requirements prior to consideration of widespread application. In short, implementation of WNS treatments on a landscape-scale is likely years away.

Risks associated with application of any compound in a field setting remain largely unknown and undemonstrated when considering the additional harm to bats, other biota, or the environment. Furthermore, the RRDAP compound has not been tested on northern long-eared bats, so it has not yet been demonstrated to be safe or effective for this species. Therefore, the assertion that the treatment of bats with RRDAP or other agents may increase bat survival and allow northern long-eared bat to survive exposure to the pathogen is unsubstantiated. No treatment in development has demonstrated any potential to allow a species to ''adapt to the presence of the pathogen.''

Any treatment or application demonstrated to slow the spread and mortality of WNS will be an important tool for potential recovery actions. However, we cannot predict exactly when or if a treatment will be proven safe and effective for large-scale implementation that will affect species at a population level.

(31) *Comment:* Comments from MAWFA stated that there is evidence that little brown bats in Pennsylvania are showing an increasing trend in body mass at time of hibernation (Turner 2014, pers. comm.), and others have suggested that there is evidence that larger body mass increases survival from WNS infection (Jonasson and Willis 2011). The commenters concluded that these trends suggest that *Myotid* species, like the northern long-eared bat, are capable of adapting behavioral strategies for dealing with WNS infection.

Our Response: These observations suggest that there is an increase in body masses of little brown bats at some colonies where WNS has been present for several years. They do not demonstrate an evolutionary shift in behavioral or physiological strategy. Increased body mass may be a result of lesser competition for prey during the fattening period (which may still be potentially beneficial for surviving winter with WNS). Furthermore, this pattern of increasing body masses in pre-hibernating little brown bats has not been documented widely. It is also important to note that these observations have been made in little brown bat only, and not in northern long-eared bat. Jonasson and Willis (2011) studied fat consumption over winter in hibernating little brown bats unaffected by WNS. They hypothesized that fatter bats may be more likely to survive WNS, but they did not test this hypothesis. Likewise, the observations in Pennsylvania have not been tested for significance or repetition.

Though related, little brown bats and northern long-eared bats are distinctly different species that have exhibited different responses to Pd infection and WNS. Banding studies in the heavily affected northeastern States have confirmed that some little brown bats have survived multiple years of WNS exposure and infection, and little brown bats continue to be observed in some areas. However there is little, if any, data to support the same trend for northern long-eared bats. Efforts to band northern long-eared bat have been initiated; however, extremely low capture rates with only very few individuals banded make it difficult to examine survival trends with this species.

(32) *Comment:* One commenter disagreed that the highest rates of development in the conterminous United States occur within the range of the northern long-eared bat (Brown *et al.* 2005, p. 1856) and contribute to the loss of forest habitat. The commenter stated that forests within the range of the northern long-eared bat continue to recover from unsustainable forestry practices that were employed in the late 19th century.

Our Response: Although the commenter disagreed with the statement in the proposed listing rule with regard to rates of development within the range of the northern long-eared bat, there was no evidence presented to refute this statement. Further, information we have, in the proposed listing rule and in supporting documents, shows that rates of development and forest conversion in general within the species' range is not decreasing. For example, the USFS projected forest losses of 16 to 34 million acres (4 to 8 percent) by 2060 across the continental United States (USFS 2012).

(33) *Comment:* MAFWA stated that recent evidence documents a multitude of species in Europe coexist with the causative agent and do so by getting minimal infection and without documented mortality (Zukal *et al.* 2014). The commenter also stated that data recently presented at the 2014 WNS meeting show the amount of infection on surviving bats in the Northeast has decreased significantly from the period where mass mortality was experienced, and is now closer to the level of European infection.

Our Response: Pd and WNS were not investigated in Europe until after the disease was identified in North America. However, subsequent to the discovery of WNS in North America, European scientists have identified evidence of Pd dating back many decades, leading to the hypothesis that the fungus has been present in Europe for a long time. We cannot know what the impact of Pd has been on different bat species in Europe throughout evolutionary history. The fact that 13 species of European bats have been documented with WNS or Pd without documentation of significant declining populations has led to conclusions that those European species coexist with the disease. However, this observation does not mean WNS did not severely impact or even cause extinction of European bat species at some point in the past.

North American species differ significantly in physiology and ecology to similar species in Europe. We have gained considerable understanding of variability in impact of WNS among North American species, such as that certain species like the big brown bat and Townsend's big-eared bat appear resilient to or unaffected by the disease, while other species like the northern long-eared bat have declined substantially. Therefore, the best available data indicate there are variable response levels to WNS among bat species; northern long-eared bats are among the most susceptible species to WNS.

(34) *Comment:* One commenter stated that the impact of white-nose syndrome may have been overstated by the Service. They commented that the data used in the proposed listing rule only included known winter roost sites surveys and the rule does not state that

the species could be employing behavior plasticity and using alternative roosts. This same commenter also questioned carcass testing reports, as presented in the rule, confirming only 50 percent of individuals tested positive for white-nose syndrome.

Our Response: We acknowledge that northern long-eared bats may be using alternate, often unknown or unsurveyed, winter roosts and, as a result, may be unobserved during winter. However, regardless of the type of hibernacula used, northern long-eared bats require roosts with cool, humid conditions, which are also suitable for Pd growth. As for the question of the carcass testing reports, this information was removed in the final listing rule because it was potentially misleading. A small portion of dead bats are tested for the disease, especially in areas where WNS has not been confirmed recently. Therefore, reporting on the small number of bats tested does not give an accurate depiction of the impact of the disease on the species. Principally, the northern long-eared bat is susceptible to WNS, and mortality of northern long-eared bats due to the disease has been confirmed throughout the majority of the WNS-affected range.

Tribal Comments

(35) *Comment:* One Tribe provided information related to the biology, ecology, and threats faced by the northern long-eared bat that reinforced the data and information included in the Background section of this final rule. Additionally, the commenter provided information in response to other public comments that we had received and the letters received from the Midwest and Southeast Association of Fish and Wildlife Agencies and Regional Forester Groups and the Northeast Association of Fish and Wildlife Agencies. They also expressed their support for listing the species as endangered.

Our Response: We appreciate the input provided and incorporated it into the final rule where appropriate. For the reasons stated in the Determination section of this final listing rule, we have determined that the northern long-eared bat should be listed as threatened, rather than endangered. Please refer to that section for a detailed description of that determination.

Tribal Coordination

In October 2013, Tribes and multi-tribal organizations were sent letters inviting them to begin consultation and coordination with the service on the proposal to listing the northern long-eared bat. In August 2014, several Tribes and multi-tribal organizations were sent an additional letter regarding the Service's intent to extend the deadline for making a final listing determination by 6 months. A conference call was also held with Tribes to explain the listing process and discuss any concerns. Following publication of the proposed rule, the Service established 3 interagency teams (biology of the northern long-eared bat, non-WNS threats, and conservation measures) to ensure that States, Tribes, and other Federal agencies were able to provide input into various aspects of the listing rule and potential conservation measures for the species. Invitations for inclusion in these teams were sent to Tribes within the range of the northern long-eared bat. Two additional conference calls (in January and March 2015) were held with Tribes to outline the proposed species-specific 4(d) rule and answer questions. Through this coordination, some Tribal representatives expressed concern about how listing the northern long-eared bat may impact forestry practices, housing development programs, and other activities on Tribal lands.

Public Comments

(36) *Comment:* One commenter stated that listing should be restricted to the portion of the species' range that has experienced WNS, the current threat to this species. The commenter urged the Service to, instead of listing the species rangewide, consider listing as a DPS, because the species is stable across much of its range and a DPS will ''allow the Service to apply appropriate conservation measures in the area of greatest need.''

Our Response: When completing a status review in response to a petition to list a species, we conduct that review across the species' range, unless the petition requests that we evaluate a different entity, such as a DPS. The petition to list the northern long-eared bat requested that we consider whether listing is warranted for the species; the petition did not specifically ask us to consider whether any DPSs warrant listing. In conducting status reviews, we generally follow a step-wise process where we begin with a rangewide evaluation. If the species does not warrant listing rangewide, we then consider the status of other listable entities. Furthermore, the Service is to exercise its authority with regard to DPSs ''sparingly and only when the biological evidence indicates that such action is warranted'' (Senate Report 151, 96th Congress, 1st Session). For the northern long-eared bat, we have determined that the species warrants listing as a threatened species throughout its range based on current threats (primarily due to WNS) and how those threats are likely to impact the species into the future.

(37) *Comment:* A few commenters stated that the Service did not consider the benefit offered to the species from protection of other listed species, such as the Indiana bat. One commenter further stated that because of this overlap in the ranges of the two species, there is no reason to list the northern long-eared bat.

Our Response: There have been conservation efforts that have been undertaken to benefit other federally listed species, such as the Indiana bat, within the range of the northern long-eared bat. More detailed information can be found above, under *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* However, prohibitions of the Act are species-specific; thus prohibitions from take would not apply to the northern long-eared bat simply due to another similar species being listed. Further, benefits to the northern long-eared bat that may occur as the result of other similar species that are listed are primarily habitat-related, and do not address the primary threat to the northern long-eared bat, WNS.

(38) *Comment:* Several commenters stated that the peer review of the proposed listing rule should have taken place prior to publication.

Our Response: In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are to seek the expert opinions of at least three appropriate and independent specialists regarding proposed listing actions. We are to provide a summary of their review in the final decision, but are not required to conduct this peer review prior to the proposal. The purpose of peer review is to ensure that our final listing determination is based on scientifically sound data, assumptions, and analyses. We solicited expert opinion from seven peer reviewers with scientific expertise, including familiarity with the northern long-eared bat and its habitat, biological needs, and threats. We received responses from four of the peer reviewers, and have addressed their comments and incorporated relevant information into this final determination.

(39) *Comment:* A few commenters stated that the proposed listing rule was rushed due to judicial settlement.

Our Response: We disagree. The Service received a petition to list the northern long-eared bat and eastern

small-footed bat in 2010. We published a substantial 90-day finding on June 29, 2011 (76 FR 38095), indicating that listing these two species may be warranted and initiating a status review. Completion of the status reviews were delayed due to listing resources expended on other higher priority rulemakings. On July 12, 2011, the Service filed a multiyear work plan as part of a settlement agreement with the Center for Biological Diversity and others, in a consolidated case in the U.S. District Court for the District of Columbia. A settlement agreement in Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), Multi-district Litigation Docket No. 2165 (D.D.C. May 10, 2011) was approved by the court on September 9, 2011. The settlement agreement specified that listing determinations be made for more than 250 candidate species, and specified dates for several petitioned species with delayed findings. For the northern long-eared bat, the specified date for completing a 12-month finding, and a listing proposal if that finding was warranted, was September 30, 2013, 3 years after the receipt of the petition.

(40) *Comment:* Several commenters expressed their concern as to whether unpublished data cited in the proposed listing rule were peer-reviewed.

Our Response: Under the Act, we are obligated to use the best available scientific and commercial information, which in this case included results from surveys, reports by scientists and biological consultants, natural heritage data, and expert opinion from biologists with experience studying the northern long-eared bat and its habitat, whether published or unpublished. Additionally, we sought comments from independent peer reviewers to ensure that our determinations are based on scientifically sound data, assumptions, and analysis. We solicited information from the general public, nongovernmental conservation organizations, State and Federal agencies that are familiar with the species and its habitat, academic institutions, and groups and individuals that might have information that would contribute to our knowledge of the species, as well as the activities and natural processes that might be contributing to the decline of the species. All told, this information represents the best available scientific and commercial data on which to base this listing determination for the northern long-eared bat.

(41) *Comment:* A few commenters questioned if southern populations of northern long-eared bats are roosting in trees over the winter rather than hibernating in caves and mines and, therefore, might avoid contracting white-nose syndrome.

Our Response: Northern long-eared bats predominantly hibernate in caves and abandoned mines. There are a few documented instances of this species using other types of structures that simulate a cave-like environment that is suitable for hibernation. To date, there have been no documented cases of this species hibernating in trees. The species' physiological demands of hibernation limit selection of winter habitat to areas with relatively stable cool temperatures and humid conditions, which are the same conditions required for the persistence of Pd. See ''Hibernation'' in the *Biology* section of this final rule for a more complete description of habitat for the species.

(42) *Comment:* We received several comments that questioned how listing the northern long-eared bat will address or reverse the species' decline due to white-nose syndrome. One commenter stated that listing the species as ''endangered'' will not reverse its decline. Several stated that habitat loss is not a threat to the species, and white-nose syndrome is the only reason for the species' decline; therefore, placing additional restrictions on activities, such as tree clearing, will have minimal impact on conserving the species and will not halt the spread of white-nose syndrome.

Our Response: No other threat is as severe and immediate for the northern long-eared bat as white-nose syndrome. If this disease had not emerged, it is unlikely the northern long-eared population would be experiencing such a dramatic decline. However, as white-nose syndrome continues to spread and cause mortality, other sources of mortality could further diminish the species' resilience or ability to survive. White-nose syndrome has significantly reduced the numbers of northern long-eared bats throughout much of its range. Small or declining populations may be increasingly vulnerable to other impacts, even impacts to which they were previously resilient. These other impacts may include indirect impact (*e.g.,* clearing important roosting or foraging habitat) or direct impact (*e.g.,* cutting down occupied roost trees while pups are non-volant). We expect that northern long-eared bat populations with smaller numbers and with individuals in poor health will be less able to persist or to rebound.

The Service believes that restrictions alone are neither an effective nor a desirable means for achieving the conservation of listed species. We prefer to work collaboratively with private landowners, and strongly encourage individuals with listed species on their property to work with us to develop incentive-based measures such as safe harbor agreements or habitat conservation plans (HCPs), which have the potential to provide conservation measures that effect positive results for the species and its habitat while providing regulatory relief for landowners. The conservation and recovery of endangered and threatened species, and the ecosystems upon which they depend, is the ultimate objective of the Act, and the Service recognizes the vital importance of voluntary, nonregulatory conservation measures that provide incentives for landowners in achieving that objective.

(43) *Comment:* Commenters stated that information from New York and Vermont indicates that northern long-eared bat populations are holding steady or increasing.

Our Response: Contrary to information stated by this commenter, information we received from Vermont and New York indicate sharp population declines due to white-nose syndrome based on winter and summer data. Please see the ''Eastern Range'' section under *Distribution and Relative Abundance,* above, for a more detailed discussion of the information received from these two States. The one potential exception in New York is the Long Island population, where the species continues to be found during summer surveys. This may suggest that there may be scattered locations where this species has not been as severely impacted as other areas of eastern North America. However, these observations are unproven at this point and are the basis for ongoing research to determine the validity of a white-nose syndrome refugia hypothesis.

(44) *Comment:* One commenter stated that the Service should consider that there is a lack of evidence that mass mortality of northern long-eared bats due to white-nose syndrome is occurring outside the northeastern United States even though white-nose syndrome is continuing to spread. There have been no reported mass mortality events outside of the Northeast, and the northern long-eared bat continues to be commonly captured in mist-net surveys in some regions.

Our Response: To date, because impacts from WNS in the far South and West have not yet occurred, it is impossible to conclude that the timeframe and degree of impact will be identical. However, everything that has been observed to date suggests it will be

similar. Many sites in the Northeast were infected with WNS prior to development and validation of refined molecular tools to detect Pd. Thus, a hibernaculum in the Northeast was likely confirmed with white-nose syndrome when there were visible signs of the disease. With genetic tools, it may now be 2 to 3 years from the first detection of a Pd-positive bat at a site and visible signs of the disease in bats. Therefore, there remains some uncertainty in the applicability of the timeline observed in the Northeast to more recent observations in the Midwest and Southeast.

Additionally, there is evidence that microclimate inside the cave, duration and severity of winter, hibernating behavior, body condition of bats, genetic structure of the colony, and other variables may affect the timeline and severity of impacts at the hibernaculum level. However, evidence that any of these variables would greatly delay or reduce mortality in infected colonies has yet to surface. Some have speculated that climatic factors may extend the disease timeline or may result in lower mortality rates among bat populations in the southern United States; however, observations from the winter of 2013–2014 demonstrated the potential for white-nose syndrome-related mortality at sites believed to be in their first or second year of infection as far south as Alabama, Arkansas, and Georgia. Please see our Factor C discussion in the section titled, ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' above, for more information.

(45) *Comment:* One commenter stated that reported evidence for declines due to white-nose syndrome are based on localized hibernacula surveys, which fail to provide data sufficient to document regional or rangewide abundance or trends. Consistent with this, a recent report by the Committee on the Status of Species of Risk in Ontario (COSSARO) states: Any declines that have taken place can only be inferred from pre- and post-WNS monitoring of known hibernacula. Even then, a lack of baseline population information precludes an evaluation of what proportion of the known population is represented by inferred declines, since not all hibernacula are known, let alone receive regular monitoring attention (COSSARO 2013, p. 4).

Our Response: We received hibernacula data from most States throughout the range of the northern long-eared bat. These data have been included in our analysis of the impact of white-nose syndrome on the species. The information that was included in our analysis included pre- and post-white-nose syndrome data. We agree that we may not be aware of, and thus have not been surveying, all of the northern long-eared bat hibernacula within the species' range. However, it is also extremely likely that if these sites are used by hibernating bats, they exhibit consistently cool, humid conditions suitable for Pd growth. Thus, the bats using them will in all likelihood encounter Pd during activities at swarming and staging sites where they interact with other bats, even if they hibernate in smaller groups elsewhere. We do not use the available hibernacula counts to estimate northern long-eared bat population size; rather we use the hibernacula data to understand and estimate population trends for the species.

(46) *Comment:* One commenter stated that the Service mentioned that some spread models indicate that western and southern populations of the northern long-eared bat may not be impacted by white-nose syndrome; however, in the proposed listing rule we said that this would offer the species little respite since this is on the edge of the species' range. This commenter stated that this does not represent the best scientific and commercial data available. Another commenter similarly stated that Boyles and Brack (2009) and Ehlman *et al.* (2013) describe models that predict the possibility of lower mortality at lower latitudes, due to shorter winters and shorter hibernation in southern States, leading to reduced impact of white-nose syndrome.

Our Response: The model that the commenter referenced is Hallam and McCracken. (2011), which was discussed in the proposed listing rule. Hallam and McCracken (2011) tested temperature-dependence of white-nose syndrome spread, which at the time of the model creation (2011) supported the current distribution of white-nose syndrome. Although the analysis from this model predicted continued rapid spread throughout the United States, the model also suggested that there may be a temperature-dependent boundary in southern latitudes that may offer refuge to white-nose syndrome-susceptible bats. However, there are limitations in data availability for this model; several States in the Midwest and central regions were not included. In addition, after formation of the model, many counties below Hallam and McCracken's hypothesized temperature-dependent boundary have been confirmed with white-nose syndrome or have had Pd detected. Considering the limitations with this model, we cannot put a high degree of confidence in the conclusions drawn. Boyles and Brack (2009, p. 9) modeled survival rates of little brown bats during hibernation and determined that clustering (with other bats) and disturbances have an overall impact on survival rates during hibernation; however, there was no discussion of white-nose syndrome and its impact on cave bats. Ehlman *et al.* (2013, p. 581) developed a model using evaporative water loss at the stimulus for arousal in both healthy and white-nose syndrome-affected little brown bats. They concluded that populations experiencing shorter southern winters could persist longer than their northern counterparts when faced with white-nose syndrome. However, this is speculative at this time, as the authors acknowledged that there are few data on survival rates for the more southerly regions where white-nose syndrome has more recently spread.

(47) *Comment:* One commenter stated that the Service did not account for the limiting effects that the lower density and occurrence of hibernacula in the central United States will have on the rate of white-nose syndrome spread and its effects on the northern long-eared bat. They referred to peer review comments of A. Kurta (Nov. 12, 2013). The commenter contended that Kurta stated that such lower hibernacula density and occurrence will help protect the species from white-nose syndrome in those areas because the disease is believed to infect the species primarily through bat-to-bat transmission in hibernacula, where the conditions required for growth of the fungus occur.

Our Response: We have no reason to believe that the northern long-eared bat will be protected from white-nose syndrome in any portion of its range, including the central United States. The statement that white-nose syndrome spread will slow because there are fewer caves or mines serving as hibernacula in the western portion of the northern long-eared bat's range conflicts with the assertion made by other commenters that the northern long-eared bat will use a wide variety of sites as hibernacula (not just caves and mines). White-nose syndrome has been confirmed at numerous hibernacula that are not caves or mines (but with similar habitat conditions), including culverts, bunkers, forts, tunnels, excavations, quarries, and even houses. In addition, all models concerning the spread of white-nose syndrome predict the disease or Pd will continue to spread throughout the range, including the central United States. Models that provide estimates of the timing of spread, predict the disease will cover the entirety of the species'

range (within the models limited geographic limits: The United States) by sometime between 2 and about 40 years (see our Factor C discussion in the section titled, ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' above, for more information). These models all have significant limitations for predicting timing of spread and in many instances have overestimated when WNS would arrive in currently unaffected counties, in one case by as much as 45 years. Limitations include underestimating availability of non-cave hibernacula, lacking relevant biological variables of affected species, excluding spread through Canada or counties with insufficient data, and the fact that Pd is expanding its ecological niche in North America by demonstrating its viability in previously unexposed environments.

(48) *Comment:* One commenter suggested that the Service direct its efforts toward determining the exact original cause of white-nose syndrome, possible treatment strategies for bats, assessing under what conditions the fungus is transmitted and how it spreads, determining what the optimal environmental conditions are that allow the growth and transmission of the fungus, determining what is driving the spread of the fungus, and determining the differences in those colonies affected and unaffected by white-nose syndrome. This commenter stated that only when this critical information is known would the Service be able to determine appropriate listing actions, if necessary.

Our Response: Current knowledge on the cause of the disease, how and under what conditions the fungus is transmitted, how it spreads, and the optimal conditions that allow the growth of the fungus are explained in detail under our Factor C discussion in the section titled, ''White-nose Syndrome,'' above. As for treatment of the disease, the Service leads the national response to white-nose syndrome and supports research and actions identified in the national response plan to contain white-nose syndrome and develop treatments or controls. The Service has granted more than $19.5 million to institutions and Federal and State agencies for research and response actions. Containment strategies are intended to slow the spread of WNS and allow time to develop management options; they are not part of a recovery plan for affected species. There are a number of promising treatments currently in development, and in various stages of the research process. However, considerably more research and coordination is needed to address the safety and effectiveness of any treatment proposed for field use and to meet regulatory requirements prior to consideration of widespread application. In short, implementation of WNS treatments on a landscape-scale is likely years away. The multi-agency and multi-organization white-nose syndrome response team has and continues to develop recommendations, tools, and strategies to slow the spread of white-nose syndrome, minimize disturbance to hibernating bats, and improve conservation strategies for affected bat species. This collaboration will also prepare management agencies to implement WNS mitigation strategies once the strategies are validated. Information on some of these products developed by the response team can be found in our Factor C discussion in the section titled, ''Conservation Efforts to Reduce Disease or Predation,'' above. If listing is warranted, the Act requires us to list a species regardless of whether listing will ameliorate the threat to the species.

(49) *Comment:* During the second public comment period, one commenter requested a public hearing be held in Crook County, Wyoming. This commenter further stated that they were not given sufficient notice of the first public comment period.

Our Response: In response to the request from Crook County, Wyoming, to hold a public hearing, the Service held a public hearing in Sundance, Wyoming, on December 2, 2014. We consider the comment periods described in the introductory text of this section of the final rule (Summary of Comments and Recommendations on the Proposed Listing Rule) to have provided the public a sufficient opportunity for submitting both written and oral public comments. We contend that there has been adequate time for comment, as we accepted public comments on the proposed listing rule for the northern long-eared bat for a total of 240 days.

(50) *Comment:* Commenters stated that there is no information provided in the status review to indicate that the proposed listing or development of a recovery plan would reverse the species' decline.

Our Response: If listing is warranted, the Act requires us to list a species based on one of the five factors, alone or in combination. Disease is one of these factors to be considered. In making a determination as to whether a species meets the Act's definition of an endangered or threatened species, under section 4(b)(1)(A) of the Act the Secretary is to make that determination based solely on the basis of the best scientific and commercial data available. The question of whether there may be some positive benefit of listing the species is not considered in the decision process, only if the species meets the definition of an endangered or threatened species.

(51) *Comment:* Commenters stated that the listing should not be used as a funding mechanism to conserve the species.

Our Response: Although there are some funding opportunities available to promote recovery of listed species (*e.g.,* grants to the States under section 6 of the Act, funding through the Service's Partner's for Fish and Wildlife Program), we are required to make our determination based on the best scientific and commercial data available at the time of our rulemaking. The potential availability of funding does not enter into this decision of whether listing is warranted for a species. Instead we adhere to the requirements of the Act, to determine whether a species warrants listing based on our assessment of the five-factor threats analysis. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

(52) *Comment:* Several commenters stated that, in the proposed listing rule, the northern long-eared bat was described as ''commonly captured'' during summer surveys, which contradicts presented winter survey data.

Our Response: The information presented in the ''Distribution and Abundance'' section of the proposed listing rule described the historical distribution and abundance of the species prior to detection of white-nose syndrome in a given State or portion of a State. This section has been changed to *Distribution and Relative Abundance* in this final listing rule and includes a description of historical and current status to better reflect the current distribution and trend information for the species. The species is often ''commonly captured'' during summer surveys in areas within its range where it has not been impacted by white-nose syndrome; however, in areas where the

disease has been present for a longer period of time (the Northeast in particular), the species is no longer commonly captured even in summer surveys. Please see the *Distribution and Relative Abundance* section, above, for more detailed information.

(53) *Comment:* One commenter stated that we did not provide any evidence to support the notion that other factors are acting in combination with white-nose syndrome to reduce the viability of the species.

Our Response: Although we have not been able to directly observe the impact of these other factors in combination of white-nose syndrome, we contend that it is reasonable to expect that with populations that have been reduced due to white-nose syndrome, any additional stressors have the potential to reduce viability. However, depending on the type of stressor, the scale of impact may differ (rangewide vs. colony-level impact). Peer reviewers of the proposed listing rule concurred with the Service's assessment that cumulative impacts may result from other (other than white-nose syndrome) factors in addition to white-nose syndrome due to a diminished population. The Act requires us to determine if these other factors affect the northern long-eared bat's ability to persist following the effects of white-nose syndrome. Our continuing analyses are strengthening our understanding of these factors and helping us identify ways to address them.

(54) *Comment:* One commenter stated that the proposed listing rule's discussion of Factor C (disease or predation) includes various hypotheses of the causal connection between WNS and morbidity in the northern long-eared bat, but the Service admits that ''the exact process by which WNS leads to death remains undetermined.''

Our Response: Although the exact process or processes by which WNS leads to death remains unconfirmed, we do know that the fungal infection is responsible and it is possible that reduced immune function during torpor compromises the ability of hibernating bats to combat the infection. See our Factor C discussion in the section titled, ''White-nose Syndrome,'' above, for a more detailed discussion on white-nose syndrome and mortality in bats.

(55) *Comment:* One commenter stated their concern that potential seasonal forest management restrictions due to the listing will have detrimental impacts to their local forest industry and forest dependent communities, which will outweigh benefits to the species.

Our Response: In making a determination as to whether a species meets the Act's definition of an endangered or threatened species, under section 4(b)(1)(A) of the Act the Secretary is to make that determination based solely on the basis of the best scientific and commercial data available. The Act does not allow us to consider the impacts of listing on economics or humans activities whether over the short term, long term, or cumulatively. The question of whether there may be some positive benefit to the listing cannot by law enter into the determination. The evaluation of economic impacts comes into play only in association with the designation of critical habitat under section 4(b)(2) of the Act. Therefore, although we did not consider the economic impacts of the proposed listing, as such a consideration is not allowable under the Act, we will consider the potential economic impacts of a critical habitat designation (if prudent), including the potential benefits of such designation.

(56) *Comment:* One commenter stated that the Service should delay listing of the species for a minimum of 3 years while work continues to develop a solution to combat the disease.

Our Response: If listing is warranted, the Act requires us to list a species regardless of if listing will ameliorate the threat to the species. We are required to make our determination based on the best scientific and commercial data available at the time of our rulemaking. The Act requires the Service to publish a final rule within 1 year from the date we propose to list a species unless there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, but only for 6 months and only for purposes of soliciting additional data. Based on the comments received and data evaluated, we determined that an extension was necessary. However, we are able to extend the listing determination by 6 months and cannot extend the determination by 3 years, as recommended. As stated in response to a previous comment, there are a number of promising treatments currently in development, and in various stages of the research process. However, these potential treatments are still being analyzed in a clinical setting, and potential application outside of the laboratory is years away.

(57) *Comment:* Several commenters stated that more time is needed to complete population surveys for the northern long-eared bat before making a listing determination.

Our Response: Our Policy on Information Standards under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines (*http://www.fws.gov/informationquality/*), provide criteria and guidance, and establish procedures to ensure that our decisions are based on the best scientific data available at the time of our rulemaking. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to determine if a species warrants listing. Surveys completed after listing will continue to inform actions taken to conserve and recover the species.

(58) *Comment:* One researcher commented that results from his research show that Pd and WNS should be expected to occur in regions consistent with much of the current U.S. range of the northern long-eared bat in a relatively short time period, and demonstrated the potential spread to the majority of the contiguous United States. Further their model (Maher *et al.* 2012) showed that the spread rate increased with longer winters, suggesting that spread of Pd and WNS in the northern range of the species will be faster.

Our Response: We appreciate this comment and have added this information to our Factor C discussion in the section titled, ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' above. This information supports information in this final listing rule regarding the spread of white-nose syndrome within the northern long-eared bat's range.

(59) *Comment:* One commenter notes that information presented in the proposed listing rule stated that summer surveys in the Northeast have confirmed rates of decline observed in northern long-eared bat hibernacula data post-WNS, with rates of decline ranging from 93 to 98 percent; however, the extent of that summer survey data is not given, so it is unclear how expansive the sample might have been, or how consistent all of the surveys were spatially across time.

Our Response: We have taken this comment into consideration and have further explained where and when declines have been observed within the species' range in the *Distribution and Relative Abundance* section of this final rule.

(60) *Comment:* Commenters stated that population declines of more than 90 percent in the core of the species' range, with more declines predicted due to WNS, constitutes a present danger of extinction throughout all or a significant portion of its range. The population declines do not represent a mere [likelihood] of becoming an endangered species within the foreseeable future, rather endangerment ''is not just a possibility on the horizon, endangerment is already here.''

Our Response: As explained in the Determination section of this final rule, although WNS is predicted to spread throughout the range of the species, in the currently uninfected areas we have no evidence that northern long-eared bat numbers have declined, and the present threats to the species in those areas are relatively low. Thus, because the fungus that causes WNS (Pd) may not spread throughout the species' range for another 8 to 13 years, because no significant declines have occurred to date in the portion of the range not yet impacted by the disease, and because some bats persist many years later in some geographic areas impacted by WNS (for unknown reasons), we conclude that the northern long-eared bat is not currently in danger of extinction throughout all of its range. However, because Pd is predicted to continue to spread, we also determine that the northern long-eared bat is likely to be in danger of extinction within the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we are listing the northern long-eared bat as a threatened species under the Act.

(61) *Comment:* One commenter stated that the Service did not adequately cultivate its partnership with the States when developing the proposed listing rule and stated that it is imperative that the final decision consider regional differences relative to the status of the species, as specifically identified by the State wildlife agencies.

Our Response: We requested all relevant data and information from States and Federal agencies prior to publishing the proposed rule. Additionally, in 2014, we requested all available hibernacula and summer survey data from all State fish and wildlife agencies within the range of the species to ensure the most up-to-date survey information was included in this final listing rule; we received information from the majority of States. Also, following publication of the proposed listing rule, the Service established three interagency teams to ensure that States, Tribes, and other Federal agencies were able to provide input into various aspects of the listing rule and potential conservation measures for the species. The three teams are: Biology of the Northern long-eared bat, Non-WNS Threats, and Conservation Measures. Invitations for inclusion in these teams were sent to all State agencies within the range of the northern long-eared bat. Further, MAFWA hosted a meeting in Bloomington, Minnesota, in October 2014, and invited biologists and foresters from all State agencies within the species' range to discuss the potential listing of the northern long-eared bat and conservation measures. The information presented in the resulting letters from several regions of the fish and wildlife and forestry associations were considered and included in this final listing determination.

(62) *Comment:* Several commenters addressed the Northern Long-eared Bat Interim Planning and Conference Guidance.

Our Response: The Interim Planning and Conference Guidance was designed for use until the publication of this final rule. While aspects of this guidance may be included in the recovery plan for northern long-eared bat, the guidance itself does not constitute a recovery plan. We appreciate these comments and will consider them in developing a recovery plan or any potential future consultation guidelines for the species.

(63) *Comment:* One commenter stated that, although no scientific research technique is perfect, (as stated by Ingersoll *et al.* 2013) hibernacula surveys are the most reliable and consistent datasets currently available for long-term, regional studies of North American bats.

Our Response: We agree that hibernacula surveys are the recommended method, and the only method with enough history to assess trends over time, for cave-dwelling bats, including the northern long-eared bat. In this final listing rule, we use the hibernacula data (in addition to summer data) to understand and estimate population trends for northern long-eared bat. The relative difficulty of observing northern long-eared bats during hibernacula surveys should be consistent from year to year, and these data can be used to estimate relative change in numbers and indicate if the species is increasing or decreasing in number in those hibernacula. Thus, the total data available for known northern long-eared bat hibernacula can yield an individual site and cumulative indication of species population trend; declines estimated at hibernacula are corroborated by declines in acoustic records and net captures in summer.

(64) *Comment:* One commenter stated that although the Service finalized its policy regarding interpretation of ''significant portion of its range'' during the comment period on the proposed listing for the northern long-eared bat, the Service should not rely on this policy in its final determination. The commenter asserted that the information in the proposed listing rule does not support that any portion the bat's range is ''significant.''

Our Response: The Service finalized its policy on the interpretation of the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' on July 1, 2014 (79 FR 37577). This policy became effective on July 31, 2014, and the Service is now applying that interpretation to its listing determinations as a matter of agency policy. According to that final policy, an analysis of whether a species is endangered or threatened in a significant portion of its range is only undertaken when a species is found to not warrant listing under the Act throughout its range. We have determined that the northern long-eared bat warrants listing as a threatened species throughout its range, and, therefore, we did not conduct an SPR analysis for the species in this final listing determination.

(65) *Comment:* One commenter suggested that northern long-eared bats may have greater potential for survivability because they roost singly rather than clustering in larger groups as do other species during hibernation.

Our Response: The northern long-eared bat occasionally can be found in clusters with other bats, but typically is found roosting singly during hibernation. Although the species does not roost in clusters as much as other cave-bat species during hibernation, there are other life-history factors that are believed to increase the northern long-eared bat's susceptibility to white-nose syndrome in comparison to other cave bat species (*e.g.,* proclivity to roost in areas with increased humidity of hibernacula, longer hibernation time period). See our Factor C discussion in the section titled, ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' above, for a more detailed discussion.

(66) *Comment:* Several commenters stated that forest practices conducted in Minnesota on County and other managed lands provide habitat for the northern long-eared bat and that properly managed forest has not affected northern long-eared bat populations.

Our Response: We state within the five-factor analysis (Summary of Factors Affecting the Species) that other factors (other than white-nose syndrome, including forest management) are not believed to be contributing the to the current decline species-wide. However, there could be localized impacts from these other stressors, such as forest management. Further, cumulative impacts may result from these other factors in addition to white-nose syndrome due to a diminished population in the future. See our Factor A discussion in the section titled, ''Summer Habitat,'' above, for a more detailed discussion of forest management and its impact on the northern long-eared bat.

(67) *Comment:* One commenter stated that listing the northern long-eared bat would negatively impact the species, because the presumed logging restriction would result in a loss of revenues from reduced logging profits and force the county to sell property, resulting in habitat fragmentation.

Our Response: In making a determination as to whether a species meets the Act's definition of an endangered or threatened species, under section 4(b)(1)(A) of the Act the Secretary is to make that determination based solely on the basis of the best scientific and commercial data available. The question of whether there may be some positive benefit to the listing cannot by law enter into the determination. The evaluation of economic impacts comes into play only in association with the designation of critical habitat under section 4(b)(2) of the Act. Therefore, although we did not consider the economic impacts of the proposed listing, as such a consideration is not allowable under the Act; we will consider the potential economic impacts of the critical habitat designation, including the potential benefits of such designation.

(68) *Comment:* Several commenters cited Ingersoll *et al.* (2013) as evidence that the northern long-eared bat was in decline prior to the onset of white-nose syndrome.

Our Response: The Service reviewed the Ingersoll *et al.* (2013) paper and was not able to find support for the conclusion that commenters made. Based on a sampling of data from four States during an 11- to 12-year period, the models utilized in Ingersoll did not treat hibernacula or time periods with and without WNS separately. Thus, there is no way to identify the impact of WNS on the model results, nor to show a pre-WNS model versus a post-WNS model. Moreover, the authors interpret their results to suggest that northern long-eared bat population declines did not increase as a result of WNS. The weight of other available evidence contradicts this interpretation, and still supports the conclusion that the bat was not imperiled prior to WNS.

(69) *Comment:* One commenter stated that ''climate change does not pose a threat to the [northern long-eared bat]'' and asserted that ''the Service should not reevaluate potential climate change impacts on the [northern long-eared bat]'' as the species is unlikely affected by climate change because they are roosting generalists, they are unlikely to become water stressed, and they are not limited to a northern latitude range, but rather occupy a large geographic range.

Our Response: Under the Act, we include consideration of observed or likely environmental effects related to ongoing and projected changes in climate. The information presented in the ''Climate Change'' section under the Factor E discussion of this final listing rule thoroughly addresses the potential effects of a changing climate on the northern long-eared bat using the best available science.

(70) *Comment:* One commenter questioned whether Pd could grow and reproduce on non-bat substrates, and consequently spread to caves with no bats present. The commenter further states that the northern long-eared bat should not be listed to ''get ahead'' of WNS, as the potential future effects of WNS may or may not occur.

Our Response: Lorch *et al.* (2014) determined that Pd remains viable in cave substrate even in the absence of bats. Additionally, Reynolds *et al.* (2015) concluded that this persistence is sufficient to allow Pd to spread in the absence of bats, and determined that the potential for Pd to proliferate in the absence of bats greatly increases the possibility of this manner of spread. Regardless of the ability of Pd to grow and reproduce on its own, the best science supports the supposition that white-nose syndrome is the primary and current cause of the decline of the northern long-eared bat. Pd or white-nose syndrome has currently been detected in 28 U.S. States and 5 Canadian provinces in the range of northern long-eared bat. All models consulted on the spread of white-nose syndrome have predicted a continued spread of Pd. We have determined that the northern long-eared bat meets the definition of a threatened species under the Act based on its current status and what we can reasonable predict will occur in the future.

(71) *Comment:* One commenter was concerned that listing the northern long-eared bat ''could result in detrimental effects to current and future efforts to recover and provide suitable habitat for other threatened, endangered, and sensitive species'' while not addressing the primary threat of WNS. The commenter stated that other species may depend on some forest management for needed travel corridors, forest stand heterogeneity, and other activities.

Our Response: While it is true that WNS is the primary threat to the northern long-eared bat (as discussed in Summary of Factors Affecting the Species), forest management and other stressors could have localized impacts, as well as cumulative impacts in conjunction with WNS. For a more detailed discussion of forest management and its impact on the northern long-eared bat, please see our Factor A discussion in the section titled, ''Summer Habitat,'' above.

(72) *Comment:* Several commenters stated that the proposed listing rule overstated the impact from shale gas development. Commenters stated that the statements in the proposed listing rule regarding the number of wells projected and disturbance do not take into account the evolution and shift of technology of horizontal drilling and minimizing disturbance. Also, the surface disturbance created by the development of shale is temporary and many States require site restoration and reclamation as part of the permit and construction process.

Our Response: As stated previously with regard to threats other than WNS, although shale gas development may impact the species at a local level, it is not believed to be independently impacting the species rangewide.

(73) *Comment:* One commenter stated that the listing proposal does not adequately address the status of the northern long-eared bat in Canada. Currently, one third of its estimated geographic range lies within Canada, yet few data exist from this portion of the range from which a current status assessment or population trend can be drawn. Without comprehensive data from this large portion of the northern long-eared bat's geographic range, we cannot support the concept that this species is in danger of extinction.

Our Response: In 2014, the northern long-eared bat was determined, under an emergency assessment, to be endangered under the Canadian (SARA) (Species at Risk Public Registry 2014). It is estimated that approximately 40 percent of its global range is in Canada (COSEWIC 2012, p. 9; Species at Risk Public Registry 2014). Despite limited survey information on the species in Canada, the decision was made to list

the species under SARA because ''the imminent threat posed by WNS to these three bat species [northern long-eared bat, little brown bat, and tri-colored bat] were substantiated by verifiable evidence, which included evidence of the declines to these bats in Canada and the United States.'' WNS has been identified in five Canadian provinces: Ontario, Quebec, Prince Edward Island, Nova Scotia and New Brunswick.

(74) *Comment:* Several commenters stated that the impact from the oil and gas industry on the northern long-eared bat is low because the technology of drilling is changing, thus minimizing disturbance. These commenters stated that the discussion included in the proposed listing rule did not adequately address this issue.

Our Response: We acknowledge in this final rule that the footprint of oil and gas projects may be lessened by this new technology, and that some impact may be temporary in nature (see our Factor A discussion in the section titled, ''Summer Habitat,'' above). However, gas extraction continues to expand across the range of the northern long-eared bat and is still viewed as a type of forest conversion that may result in direct or indirect impact to the species, comparable to other forms of forest conversion. Although there could be localized impacts to northern long-eared bat populations from forest conversion relating to oil and gas development, factors other than white-nose syndrome are not believed to be contributing to the current decline of the species rangewide.

(75) *Comment:* One commenter presented two recently published models, Alves *et al.* (2014) and Escobar *et al.* (2014), which address WNS spread throughout North America and urged careful consideration of each model in estimating the potential spread of WNS across the range of the northern long-eared bat. This commenter stressed the limitations of these models in predicting the rate of spread; however, they acknowledged that one of the models (Escobar *et al.* (2014) predicted WNS will continue to spread to all suitable areas.

Our Response: We concur with the commenter's concerns regarding the limitations in using these models in predicting the rate of spread of WNS throughout the northern long-eared bat's range. Both Alves *et al.* (2014) and Escobar *et al.* (2014) are maximum entropy models, which are not effective for predicting areas unsuitable for Pd. Although these models may be useful in determining suitable habitat for Pd, they should not be used to predict or identify unsuitable habitat. For example, several sites predicted to be unsuitable for Pd by Alves *et al.* (September 2014) have already been confirmed with the disease. Due to these limitations, we have not used these models in arriving at the potential rate of spread of WNS across the northern long-eared bat's range.

(76) *Comment:* One organization commented that, since the Service proposed the species as endangered, we cannot decide to change the status to threatened in the final rule without first proposing the species as threatened and providing the public an opportunity to comment on that determination.

Our Response: In a proposed rule, the Service proposes the status it believes is warranted for the species, based on the information it has available at that time. After publishing that proposal, we seek comments on the underlying data and information used in that proposal, including the factors the Service considers in making a listing determination. In our final rulemaking, we analyze additional information and data received in peer review and public comments and testimony. Based on information received, in that final rulemaking we may take one of the following actions: (1) Publish a final listing rule as originally proposed, or as revised, because the best available biological data support it; or (2) withdraw the proposal because the biological information does not support listing the species. Thus, any time that we propose a species for listing, regardless of whether we propose to list the species as a threatened species or an endangered species, there are three possible outcomes of the rulemaking process: listing the species as endangered, listing the species as threatened, or withdrawing the proposed rule (and not listing the species). To use the terminology of case law regarding APA rulemaking, any of those three outcomes is necessarily a logical outgrowth of any proposed listing rule. Note also that the commenter did not argue (nor could it) that we must reopen a comment period before we determine to withdraw a proposed rule to list a species as endangered. It stands to reason that we could also determine to list as threatened, a result that diverges from a proposed endangered listing much lesser degree that a withdrawal, without reopening a comment period.

Furthermore, in this instance, the public was given additional notice that the Service may consider listing the species as threatened instead of endangered when it published a proposed species-specific rule under section 4(d) of the Act. Such 4(d) rules may only be considered for species listed as threatened. With the multiple public comments periods held on the proposal, the public was provided ample opportunity to comment on the listing status determination, and in fact, we received numerous comments on our proposal to list the northern long-eared bat that specifically addressed the status determination.

Determination

Our listing determination is guided by statutory definitions of the terms ''endangered'' and ''threatened.'' The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' The Service has further determined that the phrase ''in danger of extinction'' can be most simply expressed as meaning that a species is ''on the brink of extinction in the wild.'' See December 22, 2011, Memorandum from Acting FWS Director Dan Ashe Re: Determination of Threatened Status for Polar Bears [hereinafter the ''Polar Bear Memo'']. In at least one type of situation, where a species still has relatively widespread distribution, but has nevertheless suffered ongoing major reductions in numbers, range, or both as a result of factors that have not been abated, the Service acknowledges that no distinct determination exists between ''endangered'' and ''threatened.'' In such cases:

> Whether a species . . . is ultimately an endangered species or a threatened species depends on the specific life history and ecology of the species, the nature of the threats, and population numbers and trends. Even species that have suffered fairly substantial declines in numbers or range are sometimes listed as threatened rather than endangered (Polar Bear Memo, p. 6).

As discussed in more detail below, the northern long-eared bat resides firmly in this category where no distinct determination exists to differentiate between endangered and threatened. Therefore, our determination that this species is threatened is guided by the best available data on the biology of this species, and the threat posed by white-nose syndrome.

In determining whether to list the northern long-eared bat, and if so, whether it should be listed as endangered or as threatened, we are also guided by specific criteria set forth in section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, establishing procedures

for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

As discussed in detail below, we find that the northern long-eared bat is appropriately categorized as a threatened species. As discussed in detail under Factor C, in the sections titled ''White-nose Syndrome'' and ''Effects of White-nose Syndrome on the Northern Long-eared Bat,'' WNS has impacted the species throughout much of its range, and can be expected to eventually (from 2 to 40 years based upon models of WNS spread dynamics, but more probably within 8 to 13 years) spread and impact the species throughout its entire range. Once WNS becomes established in new areas, we can expect similar, substantial losses of bats beginning in the first few years following infection (Factor C). There is currently no effective means to stop the spread of this disease, or to minimize bat mortalities associated with the disease. The spread of WNS and its expected impact on the northern long-eared bat are reasonably foreseeable, and thus the species is likely to become an endangered species within the foreseeable future.

The Service also concludes, however, that while the species is likely to become an endangered species within the foreseeable future, it is not at the present time in danger of extinction. Stated another way, the species is not currently ''on the brink'' of extinction. In the time since our 2013 proposal to list the species as endangered, we have received and considered voluminous input on this issue. We have also obtained and carefully considered another 18 months of data and knowledge regarding the continuing effects of WNS on the species, and the prospects for spread of the disease throughout the entire range of the species. Since publication of the proposed rule in 2013, we have also received new population estimates for the species in some parts of its range. Several factors, in the aggregate, support a finding that the species is not currently endangered. For example, WNS has not yet been detected throughout the entire range of the species, and will not likely affect the entire range for some number of years (again, most likely 8 to 13 years). In addition, in the area not yet affected by WNS (about 40 percent of the species' total geographic range), the species has not yet suffered declines and appears stable (see *Distribution and Relative Abundance*, above). Finally, the species still persists in some areas impacted by WNS, thus creating at least some uncertainty as to the timing of the extinction risk posed by WNS. Even in New York, where WNS was first detected in 2007, small numbers of northern long-eared bats persist (see *Distribution and Relative Abundance*, above) despite the passage of approximately 8 years. Finally, coarse population estimates where they exist for this species indicate a population of potentially several million northern long-eared bats still on the landscape across the range of the species (see *Distribution and Relative Abundance*, above). No one factor alone conclusively establishes whether the species is ''on the brink'' of extinction. Taken together, however, the data indicate a current condition where the species, while likely to become in danger of extinction at some point in the foreseeable future, is not on the brink of extinction at this time.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the northern long-eared bat. There are several factors that affect the northern long-eared bat; however, no other threat is as severe and immediate to the species persistence as WNS (Factor C). This disease is the prevailing threat to the species, and there is currently no known cure. While we have received some information concerning localized impacts or concerns (unrelated to WNS) regarding the status of the northern long-eared bat, it is likely true that many North American wildlife species have suffered some localized, isolated impacts in the face of human population growth and the continuing development of the continent. Despite this, based upon available evidence, the species as a whole appears to have been doing well prior to WNS.

Since WNS was first discovered in New York in 2007, the northern long-eared bat has experienced a severe and rapid decline in numbers, in the areas affected by the disease. As discussed in detail in Factor C, the available data (winter and summer surveys) indicate reductions in northern long-eared bat numbers due to WNS. Summer data, although more limited, indicate similar trends to those found in hibernacula surveys. Declines documented in summer surveys are sometimes smaller than the declines shown by winter/hibernacula surveys. For example, in Pennsylvania, pre and post-WNS winter surveys showed a 99 percent decline, with summer surveys showing a 76 percent decline. Unfortunately, summer data tend to show a continuing decline (*e.g.*, by 15 percent annually in Pennsylvania), which is likely to ultimately mirror the higher declines documented during the winter. We do not fully understand the reason for the difference, or ''lag'' between winter and summer trend data. Nonetheless, both winter and summer data ultimately corroborate one another to demonstrate declines in this species due to WNS; these data support our conclusion that the species is likely to become endangered within the foreseeable future.

Determining whether the northern long-eared bat is ''in danger of extinction,'' and thus either ''endangered'' or ''threatened'' under the Act, requires some consideration of the impact of the decline in numbers (as discussed under Factor C and summarized above) on the species' viability. We do not have firm rangewide population size estimates for this species (pre-WNS or post-WNS), nor do we have the benefit of a viability analysis. Nonetheless, principles of conservation biology are instructive in determining the impact of WNS on the viability of this species. Viability can be measured generally by a species' levels of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 301–321). Resiliency means having the ability to withstand natural environmental fluctuations and anthropogenic stressors over time; redundancy means having a sufficient number of populations and distribution to guard against catastrophic events; and representation means having sufficient genetic and ecological diversity to maintain adaptive potential over time.

The presence of surviving northern long-eared bats in areas infected by WNS for up to 8 years creates at least some question as to whether this species is displaying some degree of long-term resiliency. It is unknown whether some populations that have survived the infection are now stabilizing at a lower density or whether the populations are still declining in response to the disease, and whether those populations have been reduced below sustainable levels. In the long term, based upon our best understanding of conservation biology, we believe the declines seen in this species may be unsustainable (see

Biology, above). Finally, it is also unclear whether the response of bats to Pd in Europe has utility in predicting the long-term viability of bats in North America in response to Pd, as bats in Europe are thought to have evolved with the fungus (Factor C). But we must acknowledge at least some uncertainty as to whether species numbers in the WNS-affected areas in North America represent dramatically reduced, but potentially sustainable, populations. Given that we do not as of yet have a means to stop the spread of WNS and we anticipate the same impact (high mortality) observed to date to occur as WNS spreads across the range, substantial losses in redundancy and representation are likely as well. Thus, we believe it is likely that the northern long-eared bat will decline to the point of being ''in danger of extinction.''

Having established that the northern long-eared bat is likely to decline to the point of being ''in danger of extinction,'' we next focus on the timing of when the species will reach the point of being ''in danger of extinction.'' In areas currently affected by WNS, there have clearly been significant population effects due to the disease. To date, however, WNS has not yet extended throughout the species' range. In the proposed listing rule, we concluded that the species was ''endangered'' (*i.e.*, in danger of extinction presently), as we believed that the rate of decline was unsustainable and WNS spread throughout the range was likely. In the listing proposal we also stated that WNS spread throughout the range would occur in the short term, but did not explicitly determine the timeframe. As explained under Factor C, the WNS spread models are not particularly useful in establishing a specific timeframe; together, these models indicate spread of WNS throughout the range by sometime between 2 and 40 years. Because of the lack of clarity on rate of spread obtained from the models, we believe it is more scientifically relevant to look at the rate of spread that has occurred to date on the landscape as a guide for the timeframe of WNS spread across the species' entire range. Using the data compiled to date, the fungus that causes WNS appears to have spread in all directions in North America, moving southwest at an average of over 175 miles (280 km) per year, but expanding in every direction where bats live. At this rate, the fungus will extend throughout the bat's entire range in about 8 to 9 years (Service 2015, unpublished data). Finally, we note that the Canadian COSEWIC recently estimated that Pd and/or WNS would spread through the entire range of the northern long-eared bat within 12 to 15 years (COSEWIC 2013, p. xiv). Taking into account the passage of time since publication of the COSEWIC estimate, we will place the Canadian estimate of the spread of Pd and/or WNS throughout the full range of the species to be 10 to 13 years. Taken together, we conclude that the best estimate of the spread of Pd throughout the range of the northern long-eared bat is likely between 8 and 13 years, noting that there is typically a delay (up to several years) in the onset of the disease from the first arrival of the fungus.

Although Pd/WNS is predicted to spread throughout the range of the species by 2023–2028, in the currently uninfected areas, northern long-eared bat numbers have not declined, and the present threats to the species in those areas are relatively low. The presence of potentially millions of northern long-eared bats across the species' range (see *Distribution and Relative Abundance*, above), while by no means dispositive in its own right, also indicates a current condition in which species is not ''on the brink'' of extinction. Because the fungus/disease may not spread throughout the species' range for another 8 to 13 years, because no significant declines have occurred to date in the portion of the range not yet impacted by the disease, and because some bats persist many years later in some geographic areas impacted by WNS (for unknown reasons), we conclude that the northern long-eared bat is not currently in danger of extinction throughout all of its range. However, because Pd is predicted to continue to spread, we also determine that the northern long-eared bat is likely to be in danger of extinction within the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we are listing the northern long-eared bat as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the northern long-eared bat is threatened throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of ''endangered species'' and ''threatened species.'' See the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37577, July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the

final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat protection, habitat restoration (*e.g.,* restoration of native vegetation) and management, research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming would be eligible for Federal funds to implement management actions that promote the protection or recovery of the northern long-eared bat. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the northern long-eared bat. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, USFS, NPS, and other Federal agencies; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and funding for construction and maintenance of roads or highways by the Federal Highway Administration.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. At this time, other than those activities that are in compliance with the interim 4(d) rule described below, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act. Because the northern long-eared bat occurs in a variety of habitat conditions across its range, there are many different types of activities that, without site-specific conservation measures, may directly or indirectly affect the species.

Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive: Activities that may affect the northern long-eared bat that do not comport with the interim 4(d) rule (described below); activities that alter a northern long-eared bat hibernacula; activities that may disturb, alter, or destroy occupied maternity colony habitat; and activities that otherwise kill, harm, or harass northern long-eared bat at any time of the year.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Under section 4(d) of the Act, the Service has discretion to issue regulations that we find necessary and advisable to provide for the conservation of threatened wildlife. We may also prohibit by regulation with respect to threatened wildlife any act prohibited by section 9(a)(1) of the Act for endangered wildlife. For the northern long-eared bat, the Service has developed an interim 4(d) rule, described below, that is tailored to the specific threats and conservation needs of this species.

Provisions of the Interim Species-Specific 4(d) Rule for the Northern Long-Eared Bat

Under section 4(d) of the Act, the Secretary may publish a species-specific rule that modifies the standard protections for threatened species with prohibitions and exceptions tailored to the conservation of the species that are determined to be necessary and advisable. Under this interim 4(d) rule, the Service applies all of the prohibitions set forth at 50 CFR 17.31 and 17.32 to the northern long-eared bat, except as noted below. This interim rule under section 4(d) of the Act will not remove, or alter in any way, the consultation requirements under section 7 of the Act.

As discussed in the October 2, 2013, proposed rule (78 FR 61046), the primary factor supporting the proposed determination of endangered species status for the northern long-eared bat is the disease, white-nose syndrome. We further determined that other threat factors (including forest management activities; wind-energy development; habitat modification, destruction, and disturbance; and other threats) may have cumulative effects to the species in addition to WNS; however, they have

not independently caused significant, population-level effects on the northern long-eared bat. Therefore, we are adopting a final rule to list the species as a threatened species, as explained earlier in this document, and in concert with that final rule, we are adopting an interim rule under section 4(d) of the Act to provide exceptions to the prohibitions for some of these activities that cause cumulative effects, as we deem necessary and advisable for the conservation of the species.

We conclude that certain activities described in this section, when conducted in accordance with the conservation measures identified herein, will provide protection for the northern long-eared bat during its most sensitive life stages. These activities are: Forest management activities (subject to certain time restrictions); maintenance and minimal expansion of existing rights-of-way and transmission corridors, also subject to certain restrictions; prairie management; other projects resulting in minimal tree removal; hazard tree removal; removal of bats from and disturbance within human structures; and capture, handling, attachment of radio transmitters, and tracking northern long-eared bats for a 1-year period following the effective date of this interim 4(d) rule (see **DATES**). The Service concludes that incidental take that is caused by these activities implemented on private, State, tribal, and Federal lands will not be prohibited provided those activities abide by the conservation measures in this interim rule and are otherwise legal and conducted in accordance with applicable State, Federal, tribal, and local laws and regulations.

Buffer Zone Around WNS and Pseudogymnoascus destructans (the Fungus that Causes WNS) Positive Counties (WNS Buffer Zone)

Currently, not all of the range of the northern long-eared bat is affected by WNS. Our status determination of the northern long-eared bat as a threatened species is primarily based on the impacts from WNS, and we also determined that the other threats, when acting on the species alone, are not causing the species to be in danger of extinction. Given this information, the Service concludes that while all purposeful take except removal of bats from human dwellings and survey and research efforts conducted within a 1-year period following the effective date of this interim 4(d) rule will be prohibited, all other take incidental to other lawful activities will be allowed in those areas of the northern long-eared bat's range not in proximity to documented occurrence of WNS or Pd, as identified by the Service.

Currently, WNS is mainly detected by surveillance at bat hibernacula. Thus, our direct detection of the disease is limited largely to wintering bat populations in the locations where they hibernate. However, bats are known to leave hibernacula and travel great distances, sometimes hundreds of miles, to summer roosts. Therefore, the impacts of the disease are not limited to the immediate vicinity around bat hibernacula, but have an impact on a landscape scale. For northern long-eared bats, as with all species, this means that the area of influence of WNS is much greater than the counties known to harbor affected hibernacula, resulting in impacts to a much larger section of the species' range. To fully represent the extent of WNS, we must also include these summer areas.

Overall, northern long-eared bats are not considered to be long-distance migrants, typically dispersing 40 to 50 miles (64 to 80 kilometers) from their hibernacula. However, other bat species that disperse much farther distances are also vectors for WNS spread and may transmit the disease to northern long-eared bat populations. It has been suggested that the little brown bat, in particular, be considered a likely source of WNS spread across eastern North America. Little brown bats tend to migrate greater distances, particularly in the western portions of their range, with distances up to 350 miles (563 km) or more recorded (see Ellison 2008, p. 21; Norquay *et al.* 2013, p. 510). In a recent study, reporting on bat band recoveries of little brown bats over a 21-year period, Norquay *et al.* (2013, pp. 509–510) describe recaptures between hibernacula and summer roosts with a maximum distance of 344 miles (554 km) and a median distance of 288 miles (463 km).

For the purpose of this interim rule, the counties within the northern long-eared bat's range that are considered to be affected by WNS are those within 150 miles (241 km) of the boundary of U.S. counties or Canadian districts where the fungus Pd or WNS has been detected. We acknowledge that 150 miles (241 km) does not capture the full range of potential WNS infection, but represents a compromise distance between the known migration distances of northern long-eared bats and little brown bats that is suitable for our purpose of estimating the extent of WNS infection on the northern long-eared bat. We have chosen to use county boundaries to delineate the boundary because they are clearly recognizable and will minimize confusion. If any portion of a county falls within 150 miles of a county with a WNS detection, the entire county will be considered affected. Anywhere outside of the geographic area defined by these parameters, northern long-eared bat populations will not be considered to be experiencing the impacts of WNS.

The Service defines the term ''WNS buffer zone'' as the set of counties within the range of the northern long-eared bat within 150 miles of the boundaries of U.S. counties or Canadian districts where the fungus Pd or WNS has been detected.

For purposes of this interim 4(d) rule, coordination with the local Service Ecological Services field office is recommended to determine whether specific locations fall within the WNS buffer zone. For more information about the current known extent of WNS and the 150-mile (241-km) buffer, please see *http://www.fws.gov/midwest/endangered/mammals/nlba/.*

Conservation Measures

Under this interim 4(d) rule, take incidental to certain activities conducted in accordance with the following habitat conservation measures, as applicable, will not be prohibited (*i.e.,* will be excepted from the prohibitions). For such take to be excepted, the activity must:

- Occur more than 0.25 mile (0.4 kilometer) from a known, occupied hibernacula;
- Avoid cutting or destroying known, occupied roost trees during the pup season (June 1–July 31); and
- Avoid clearcuts (and similar harvest methods, *e.g.,* seed tree, shelterwood, and coppice) within 0.25 mile (0.4 kilometer) of known, occupied roost trees during the pup season (June 1–July 31).

Note that activities that may cause take of northern long-eared bat that do not use these conservation measures may still be done, but only after consultation with the Service. This means that, while the resulting take from such activities is not excepted by this interim rule, the take may be authorized through other means provided in the Act (section 7 consultation or an incidental take permit).

Known roost trees are defined as trees that northern long-eared bats have been documented as using during the active season (approximately April–October). Once documented, a tree will be considered to be a ''known roost'' as long as the tree and surrounding habitat remain suitable for northern long-eared bat. However, a tree may be considered to be unoccupied if there is evidence

that the roost is no longer in use by northern long-eared bats. Currently, most states and Natural Heritage Programs do not track roosts and many have not tracked any northern long-eared bat occurrences. We anticipate that this will improve over time, as information on the species increases post-listing.

Known, occupied hibernacula are defined as locations where one or more northern long-eared bats have been detected during hibernation or at the entrance during fall swarming or spring emergence. Given the documented challenges of surveying for northern long-eared bats in the winter (use of cracks, crevices), any hibernacula with northern long-eared bats observed at least once, will continue to be considered ''known hibernacula'' as long as the hibernacula and its surrounding habitat remain suitable for northern long-eared bat. However, a hibernaculum may be considered to be unoccupied if there is evidence (*e.g.,* survey data) that it is no longer in use by northern long-eared bats.

These conservation measures aim to protect the northern long-eared bat during its most sensitive life stages. Hibernacula are an essential habitat and should not be destroyed or modified (any time of year). In addition, there are periods of the year when northern long-eared bats are concentrated at and around their hibernacula (fall, winter, and spring). Northern long-eared bats are susceptible to disruptions near hibernacula in the fall, when they congregate to breed and increase fat stores, which are depleted from migration, before entering hibernation. During hibernation, northern long-eared bat winter colonies are susceptible to direct disturbance. Briefly in spring, northern long-eared bats yet again use the habitat surrounding hibernacula to increase fat stores for migration to their summering grounds. This feeding behavior is particularly important for the females, who must obtain enough fat stores to carry not only themselves, but also their unborn pups, to their summer home range.

Risk of injury or death from being crushed when a roost tree is felled is most likely, but not limited, to nonvolant pups. The likelihood of roost trees containing larger number of northern long-eared bats is greatest during pregnancy and lactation (April–July) with exit counts falling dramatically after this time (Foster and Kurta 1999, p. 667; Sasse and Pekins 1996, pp. 91,92). Once the pups can fly, this risk is reduced because the pups will have the ability to flee their roost if it is being cut or otherwise damaged, potentially avoiding harm, injury, or mortality.

The Service concludes that a 0.25-mile (0.4-km) buffer should be sufficient to protect most known, occupied hibernacula and hibernating colonies. This buffer will provide basic protection for the hibernacula and hibernating bats in winter from direct impacts, such as filling, excavation, blasting, noise, and smoke exposure. This buffer will also protect some roosting and foraging habitat around the hibernacula.

The Service concludes that, in addition to preservation of known maternity roosts, a 0.25-mile (0.4-km) buffer for all clearcutting activities will be sufficient to protect the habitat surrounding known maternity roosts during the pup season. Clearcutting and similar methods is summarized here as the cutting of most or essentially all trees from an area; however, specific definitions are provided within the Society of American Foresters' Dictionary of Forestry. This buffer will prevent the cutting of known occupied roost trees, reduce the cutting of secondary roosts used by maternity colonies during the pup season from clearcutting activities, and protect some habitat for some known maternity colonies at least to some degree. Further, because colonies occupy more than one maternity roost in a forest stand and individual bats frequently change roosts, in some cases a portion of a colony or social network is likely to be protected by multiple 0.25 mile (0.4 km) buffers.

For purposes of this proposed rule and the conservation measures listed above, we recommend contacting the local state agency, State's Natural Heritage database, and local Service Ecological Services field office for information on the best current sources of northern long-eared bat records in your state to determine the specific locations of the ''known roosts'' and ''known hibernacula.'' These locations will be informed by records in each State's Natural Heritage database, Service records, other databases, or other survey efforts.

Forest Management

Continued forest management and silviculture is vital to the conservation and recovery of the northern long-eared bat. Under this interim rule, incidental take that is caused by forest management and silviculture activities that promote the long-term stability and diversity of forests, when carried out in accordance with the conservation measures, will not be prohibited. Forest management is the practical application of biological, physical, quantitative, managerial, economic, social, and policy principles to the regeneration, management, utilization and conservation of forests to meet specific goals and objectives (Society of American Foresters (SAF)(a), *http://dictionaryofforestry.org/dict/term/forest_management*). Silviculture is the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis (SAF(b), *http://dictionaryofforestry.org/dict/term/silviculture*). In addition to the conservation measures above, forest management and silviculture activities should also adhere to any applicable State water quality best management practices, where they exist. Further, we encourage the retention of snags and trees with characteristics (*e.g.,* cavities and cracks) favorable for the establishment and maintenance of maternity roosts.

The conversion of mature hardwood, or mixed, forest into intensively managed monoculture pine plantation stands, or non-forested landscape, is not exempted under this interim rule, as typically these types of monoculture pine plantations provide poor-quality bat habitat. Pine plantations are densely planted (*e.g.,* typically 675 to 750, or more, trees per acre) and are comprised of single-age or similar age class timber. They are typically managed for timber production with, depending on the product, a uniform, planned endpoint. Maximum stocking rates and short rotations result in the forfeiture of structural diversity in exchange for elevated rates of wood productivity. Plantation productivity may be further enhanced through the use of genetically improved stock, fertilization, extensive site preparation, and reduction of competition. These management actions prohibit variably stocked stands, layers of understory and midstory vegetation, and longer rotations that enhance and maintain habitat traits required by many forest-dependent wildlife species (Allen *et al.* 1996, p. 13).

Though forestry management and silviculture are vital to the long-term survival and recovery of the species, where northern long-eared bats are present when these forest management activities are performed, bats could be exposed to habitat alteration or loss or direct disturbance (*i.e.,* heavy machinery) or removal of maternity roost trees (*i.e.,* harvest). In general, however, the northern long-eared bat is considered to have more flexible habitat requirements than other bat species (Carter and Feldhamer 2005, pp. 265–

266; Timpone *et al.* 2010, pp. 120–121), and most types of forest management should provide suitable habitat for the species over the long term (with the exception of conversion to monoculture pine forest, as discussed above). Based upon information obtained during previous comment periods on the proposed listing rule, approximately 2 percent of forests in States within the range of the northern long-eared bat are impacted by forest management activities annually (Boggess *et al.,* 2014, p. 9). Of this amount, in any given year a smaller fraction of forested habitat is impacted during the active season when pups and female bats are most vulnerable. These impacts are addressed by the above conservation measures adopted in this interim rule.

Therefore, we anticipate that habitat modifications resulting from forest management and silviculture will not significantly affect the conservation of the northern long-eared bat. Further, although activities performed during the species' active season (roughly April through October) may directly kill or injure individuals, implementation of the conservation measures provided for in this interim rule will limit take by protecting currently known populations during their more vulnerable life stages.

Routine Maintenance and Limited Expansion of Existing Rights-of-way and Transmission Corridors

Under this interim rule, incidental take that is caused by activities for the purpose of maintenance and limited expansion of existing rights-of-way and transmission corridors, when carried out in accordance with the conservation measures, will not be prohibited (*i.e.,* will be excepted from the prohibitions). Rights-of-way (ROW) and transmission corridors are in place for activities such as transportation (highways, railways), utility transmission lines, and energy delivery (pipelines), though they are not limited to just these types of corridors. Under this interim rule, take of the northern long-eared bat will not be prohibited provided the take is incidental to activities within the following categories:

(1) Routine maintenance within an existing corridor or ROW, carried out in accordance with the previously described conservation measures.

(2) Expansion of a corridor or ROW by up to 100 feet (30 m) from the edge of an existing cleared corridor or ROW, carried out in accordance with the previously described conservation measures.

General ROW routine maintenance is designed to limit vegetation growth, within an existing footprint, so that operations can continue smoothly. These activities may include tree trimming or removal, mowing, and herbicide spraying. However, depending on the purpose of the corridor or ROW, maintenance may only be performed infrequently, and trees and shrubs may encroach into, or be allowed to grow within, the ROW until such time as maintenance is required. Expansion of these areas requires removal of vegetation along the existing ROW to increase capacity (*e.g.,* road widening).

Northern long-eared bats can occupy various species and sizes of trees when roosting. Because of their wide variety of habitat use when roosting and foraging, it is possible that they may be using trees within or near existing ROWs. Therefore, vegetation removal within or adjacent to an existing ROW may remove maternity roost trees and foraging habitat. Individuals may also temporarily abandon the areas, avoiding the physical disturbance until the work is complete. While ROW corridors can be large in overall distance, due to the relatively small scale of the habitat alteration involved in maintenance of the existing footprint, potential take is limited. No new forest fragmentation is expected as this expands existing open corridors. We also expect that excepting take prohibitions from ROW maintenance and limited expansion will encourage co-location of new linear projects within existing corridors. We conclude that the overall impact of ROW maintenance and limited expansion activities is not expected to adversely affect conservation and recovery efforts for the species.

Prairie Management

Under this interim rule, incidental take that is caused by activities for the purpose of prairie management, when carried out in accordance with the conservation measures, will not be prohibited (*i.e.,* will be excepted from the prohibitions). Prairie management involves management to maintain existing prairies and grasslands or efforts to reestablish grasslands that had previously been converted, usually to cropland. In some areas of the northern long-eared bat's range, tree and shrub species are overtaking prairie areas. Landowners and agencies working to establish or conserve prairies may have to manage trees and brush in order to maintain grasslands. Management activities include cutting, mowing, burning, grazing, or using herbicides on woody vegetation to minimize encroachment into prairies (Grassland Heritage Foundation, accessed December 23, 2014 *http://www.grasslandheritage.org/*). In the absence of fire, some researchers found tree species progressively invade and will eventually dominate tallgrass prairie (Bragg and Hulbert 1976, p. 23; Towne and Owensby 1984, p. 397). In some areas, if prairies are not managed to keep woody vegetation suppressed, they can eventually become shrub or forest lands sometimes in as few as 40 years (Briggs *et al.* 2002, p. 578; Ratajczak *et. al* 2011, p. 3). We conclude that the overall impact of prairie management that removes or manages trees and brush to maintain prairies and grasslands is not expected to adversely affect conservation and recovery efforts for the species.

Projects Resulting in Minimal Tree Removal

Under this interim rule, incidental take that results from projects causing minimal tree removal, when carried out in accordance with the conservation measures, will not be prohibited (*i.e.,* will be excepted from the prohibitions). Throughout the millions of acres of forest habitat in the northern long-eared bat's range, many activities involve cutting or removal of individual or limited numbers of trees, but do not significantly change the overall nature and function of the local forested habitat. As such, activities that remove an acre or less of forested habitat are expected to have little or no impact on the ecological value and function and, therefore, will be considered to be ''minimal'' as defined by this rule. Examples of activities that might fall within this category are firewood cutting, shelterbelt renovation, removal of diseased trees, culvert replacement, habitat restoration for fish and wildlife conservation, and backyard landscaping. These ongoing activities can occur throughout the northern long-eared bat's range, but we do not believe they materially affect the local forest habitat for this species and in some cases increase habitat availability in the long term.

With respect to the term ''minimal,'' we limit the effect to an impact of one acre or less. Furthermore, the limitation of the impact to an acre or less may be interpreted as follows: One acre of contiguous habitat or one acre in total within a larger tract, whether that larger tract is entirely forested or a mixture of forested and non-forested cover types. Tract may be further defined as the property under the control of the project proponent or ownership. We conclude that the overall impact of projects causing this type of minimal tree removal is not expected to adversely affect conservation and recovery efforts for the species.

Hazardous Tree Removal

Under this interim rule, incidental take that is caused by removal and management of hazardous trees will not be prohibited (*i.e.,* will be excepted from the prohibitions). Removal of hazardous trees completed, as necessary, for human safety or for the protection of human facilities is the intent of this exception. Hazardous trees typically have defects in their roots, trunk, or branches that make them likely to fall, with the likelihood of causing personal injury or property damage. The limited removal of these hazardous trees may be widely dispersed but limited, and should result in very minimal incidental take of northern long-eared bat. We recommend, however, that removal of hazardous trees be done during the winter, wherever possible, when these trees will not be occupied by bats. We conclude that the overall impact of removing hazardous trees is not expected to adversely affect conservation and recovery efforts for the species.

Removal of Bats From and Disturbance Within Human Structures

Under this interim rule, any take that is caused by removal of bats from and disturbance within human structures (*e.g.,* harm from excluding bats from their previous roost site) will not be prohibited (*i.e.,* will be excepted from the prohibitions), provided those actions comply with all applicable State laws. Northern long-eared bats have occasionally been documented roosting in human-made structures, such as houses, barns, pavilions, sheds, cabins, and bat houses (Mumford and Cope 1964, p. 72; Barbour and Davis 1969, p. 77; Cope and Humphrey 1972, p. 9; Amelon and Burhans 2006, p. 72; Whitaker and Mumford 2009, p. 209; Timpone *et al.* 2010, p. 119; Joe Kath 2013, pers. comm.). We conclude that the overall impact of bat removal from human structures is not expected to adversely affect conservation and recovery efforts for the species. In addition, we provide the following recommendations:

- Minimize use of pesticides (*e.g.,* rodenticides) and avoid use of sticky traps as part of bat evictions/exclusions.
- Conduct exclusions during spring or fall unless there is a perceived public health concern from bats present during summer and/or winter.
- Contact a nuisance wildlife specialist for humane exclusion techniques.

Capture, Handling, and Related Activities for Northern Long-Eared Bats for 1 Year

Under this interim rule, for a limited period of 1 year from the effective date of this interim 4(d) rule, purposeful take that is caused by the authorized capture, handling, and related activities (attachment of radio transmitters and tracking) of northern long-eared bats by individuals permitted to conduct these same activities for other bats will be excepted from the prohibitions. After this time period, all such take must be permitted following the Service's standard procedures under 10(a)(1)(A) of the Act. One method of determining presence/probable absence of northern long-eared bats is to conduct mist-netting at summer sites or harp trapping at hibernacula. Gathering of this information is essential to monitor the distribution and status of northern long-eared bats over time. In addition, northern long-eared bats are often captured incidentally to survey and study efforts targeted at other bat species (*e.g.,* Indiana bats). It is necessary and advisable for the conservation of northern long-eared bats to provide an exception for the purposeful take associated with these normal survey activities conducted by qualified individuals to promote and encourage the gathering of information following standard procedures (including decontamination) as these data will help us conserve and recover this species. To receive an exception, proponents must have an existing research permit under section 10(a)(1)(A) of the Act, or similar State collector's permit, for other bat species. The rationale for this limited time period is that it will be difficult to amend all permits in time for this year.

The Service concludes, for the reasons specified above, that all of the conservation measures, prohibitions, and exceptions identified in this interim rule individually and cumulatively are necessary and advisable for the conservation of the northern long-eared bat and will collectively promote the conservation of the species across its range.

We publish this interim species-specific rule under section 4(d) of the Act in full recognition that WNS is the primary threat to species continued existence. All of the other (non-WNS) threats combined did not lead to imperilment of the species, and elimination of all other non-WNS threats will not likely improve the potential for recovery of this species in any meaningful way unless we find a means to address WNS. We also recognize, however, that in those areas of the country impacted by WNS, some reasonable measures may be taken to protect the species from additive stresses as a result of other factors. By focusing on conservation measures that clearly protect individual bats, we minimize needless and preventable deaths of bats during the species' most sensitive life stages. Although not fully protective of every individual, the conservation measures identified in this interim rule help protect maternity and hibernating colonies, while allowing limited impacts to habitat. We have focused the Act's protections on the landscape scale by protecting known hibernacula, protecting the species from activities that would result in large-scale forest conversion or loss, and encouraging research on WNS and other aspects of the species' biology by simplifying the permitting process. This interim species-specific rule under section 4(d) of the Act provides the flexibility for certain activities to occur while not significantly impacting habitat for this species and while still promoting conservation of the species across its range.

Of the activities excepted by this interim rule, we project that forest management activities will have the greatest potential impact on the northern long-eared bat. Based upon information obtained during previous comment periods on the proposed listing rule, we expect approximately 2 percent of forests in States within the range of the northern long-eared bat to experience forest management activities this year (Boggess *et al.,* 2014, p. 9). Put another way, we would expect 98 percent of potential habitat to be completely unaffected by forest management while this interim rule is in effect. Of the remaining 2 percent, a smaller fraction of this forested habitat will actually be harvested during the northern long-eared bat's active season (April–October), and a smaller portion yet would be harvested during the pup season. For the remaining percentage of bats actually affected by forest management, we expect implementation of the conservation measures to significantly reduce the take of those individual bats where there are known northern long-eared bat roost trees. When occupied roosts are cut outside of the pup season or if undocumented northern long-eared bat roosts are cut while occupied, some portion of these individuals (particularly males) will flee the roost and survive. Thus, we anticipate only a small percentage (less than 1 percent) of northern long-eared

bats will be impacted by forestry management activities.

We anticipate that the additional activities covered by this interim species-specific 4(d) rule will only have a minimal impact on northern long-eared bat habitat and individuals. The activities associated with ROW management and expansion, minimal tree removal, prairie management, and hazard tree removal collectively impact only small percentages of northern long-eared bat habitat; low levels of take of individuals are expected given the limited scope of these activities and the season during which they occur.

We conclude that take of the northern long-eared bat excepted by this interim rule will be small and will not pose a significant impact on the conservation of the species as a whole. However, we recognize that there is some uncertainty regarding the level of take that may result and that there are other approaches and additional conservation measures could improve the overall conservation outcome of this interim species-specific rule under section 4(d) of the Act. We are seeking public comments on this interim rule (see Public Comments Solicited on the Interim 4(d) Rule, below), and we will publish either an affirmation of the interim rule or a final rule amending the interim rule after we fully consider all comments we receive. If you previously submitted comments or information on the proposed 4(d) rule we published on January 16, 2015 (80 FR 2371), please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in our final determination on the 4(d) rule.

Table 2 (below) summarizes the details of the interim species-specific 4(d) rule for the northern long-eared bat.

Is the area affected by WNS (WNS buffer zone)?	Take prohibitions at 50 CFR 17.31 and 17.32	Take exceptions in interim 4(d) rule	
		Purposeful	Incidental
No	All apply, with the following exceptions listed here.	Actions with the intent to remove northern long-eared bats from within human structures and that comply with all applicable State regulations. Actions relating to capture and handling of northern long-eared bats by individuals permitted to conduct these same activities for other bats, for a period of 1 year following the effective date of the interim 4(d) rule.	Any incidental take of northern long-eared bats resulting from otherwise lawful activities.
Yes	All apply, with the following exceptions listed here.	Actions with the intent to remove northern long-eared bats from within human structures and that comply with all applicable State regulations. Actions relating to capture, and handling of northern long-eared bats by individuals permitted to conduct these same activities for other bats, for a period of 1 year following the effective date of the interim 4(d) rule.	Implementation of forest management, maintenance and expansion of existing rights-of-way (ROW) and transmission corridors, prairie management, and minimal tree removal projects that: • Occur more than 0.25 mile (0.4 km) from a known, occupied hibernacula; • Avoid cutting or destroying known, occupied roost trees during the pup season (June 1–July 31); and • Avoid clearcuts (and similar harvest methods, *e.g.,* seed tree, shelterwood, and coppice) within 0.25 mile (0.4 km) of known, occupied roost trees during the pup season (June 1–July 31). • Routine maintenance within an existing corridor or ROW, carried out in accordance with the previously described conservation measures. • Expansion of a corridor or ROW by up to 100 feet (30 m) from the edge of an existing cleared corridor or ROW, carried out in accordance with the previously described conservation measures. Removal of hazard trees for the protection of human life and property.

Need for Interim Final Rule

Under 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act (APA), we have good cause to find that the delay in adopting a rule, which would be caused by adequately addressing and responding to public comments on the January 16, 2015, proposed rule (80 FR 2371), would be detrimental to the conservation of the northern long-eared bat and, therefore, is contrary to the public interest. If the Secretary went through the standard rulemaking process (granting requested extensions of the public notice-and-comment period and honoring requests for public hearings or meetings), we would be unable to finalize the conservation measures set forth in this interim rule concurrent with the final listing rule. This would result in the default provisions at 50 CFR 17.31 and 17.32 controlling northern long-eared bat management until we complete the standard process to adopt a 4(d) rule. That outcome would be contrary to the public interest in this case because immediate implementation of the interim rule has the advantage of providing a conservation benefit to northern long-eared bat that is unavailable under the general threatened species provisions at 50 CFR 17.31 and 17.32. Under this interim rule, the Service can continue to except the take that will result from the activities addressed within and still address the conservation of bats in individual known roost trees that need protection due to the impacts of WNS. The general threatened species

provisions at 50 CFR 17.31 and 17.32 would not allow such protection for northern long-eared bat. In addition, as discussed in detail in the preamble, applying the default provisions under 50 CFR 17.31 and 17.32, unmodified by a species-specific 4(d) rule, would not provide any significant conservation benefit to the species. Alternatively, another option left to the agency's discretion would be to have no prohibitions for a species determined to be threatened. However, as stated, we think that it is appropriate to provide some protection for this species during its most sensitive life stages so that the northern long-eared bat has the best chance of fighting WNS. We believe this interim species-specific 4(d) rule provides a balance between the default provisions at 50 CFR 17.31 and 17.32 and no take prohibitions by providing the flexibility for certain activities to occur while not significantly impacting habitat for this species and still promoting species conservation across its range.

In general, interim rules are effective immediately upon publication due to the urgency of the actions within those rules. The final rule listing the northern long-eared bat as threatened is published as a part of this document, and is effective in 30 days (see **DATES**). To avoid any confusion arising from varying effective dates, and because we cannot establish a 4(d) rule for a species that is not yet listed, this interim species-specific 4(d) rule will also be effective in 30 days (see **DATES**), to coincide with the effective date of the listing.

Public Comments Solicited on the Interim 4(d) Rule

We request comments or information from other concerned Federal and State agencies, the scientific community, or any other interested party concerning the interim 4(d) rule. We will consider all comments and information we receive during our preparation of an affirmation or final rule under section 4(d) of the Act. With regard to the interim 4(d) rule, we particularly seek comments regarding:

(1) Whether measures outlined in this interim rule under section 4(d) of the Act are necessary and advisable for the conservation and management of the northern long-eared bat.

(2) Whether it may be appropriate to except incidental take as a result of other categories of activities beyond those covered by this interim rule and, if so, under what conditions and with what conservation measures.

(3) Whether the Service should modify the portion of this interim rule under section 4(d) of the Act that defines how the portion of the northern long-eared bat range will be identified as the ''WNS buffer zone.'' We are seeking comments regarding the factors and process we used to delineate where on the ground we believe WNS is likely affecting the northern long-eared bat and whether that delineation should incorporate political boundaries (*e.g.*, county lines) for ease in describing the delineated area to the public.

(4) Additional provisions the Service may wish to consider for a revision to this interim rule under section 4(d) of the Act in order to conserve, recover, and manage the northern long-eared bat.

Please note that comments merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.'' If you previously submitted comments or information on the January 16, 2015, proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in our final determination on this interim rule. Our final determination on this interim rule will take into consideration all written comments and any additional information we receive. The final decision may differ from this interim final rule, based on our review of all information received during this rulemaking proceeding.

Our intent is to issue an affirmation of this interim rule or a final species-specific rule under section 4(d) of the Act for the northern long-eared bat by the end of the calendar year 2015.

You may submit your comments and materials concerning this interim rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this interim rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such

designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of listed species, both inside and outside the critical habitat designation, continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism for the northern long-eared bat, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. In general, the potential benefits of designation may include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the northern long-eared bat.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable

when one or both of the following situations exist: (i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. As information regarding the biological needs of the species is not sufficiently well known to permit identification of areas as critical habitat, we conclude that the designation of critical habitat is not determinable for the northern long-eared bat at this time.

There are many uncertainties in designating hibernacula as critical habitat for the northern long-eared bat. We lack sufficient information to define the physical and biological features or primary constituent elements with enough specificity; we are not able to determine how habitats affected by WNS (where populations previously thrived and are now extirpated) may contribute to the recovery of the species or whether those areas may still contain essential physical and biological features. Therefore, we currently lack the information necessary to propose critical habitat for the species.

There are also uncertainties with potential designation of summer habitat, specifically maternity colony habitat. Although research has given us indication of some key summer roost requirements, the northern long-eared bat appears to be somewhat opportunistic in roost selection, selecting varying roost tree species and types of roosts throughout the range. Although research has shown some consistency in female summer roost habitat (*e.g.,* selection of mix of live trees and snags as roosts, roosting in cavities, roosting beneath bark, and roosting in trees associated with closed canopy), the species and diameter of the tree (when tree roost is used) selected by northern long-eared bats for roosts vary widely depending on availability. Thus, it is not clear whether certain summer habitats are essential for the recovery of the species or whether these areas may require special management.

A careful assessment of the designation of hibernacula as critical habitat will require additional time to fully evaluate which features are essential to the conservation of the northern long-eared bat and how those features might change as WNS spreads. In addition, summer habitat will require a similar assessment and evaluation of the essential physical and biological features and what special management they might require. Additionally, we have not gathered sufficient economic and other data on the impacts of critical habitat designation. These factors must be considered as part of the designation process. Thus, we find that critical habitat is not determinable for the northern long-eared bat at this time.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). It is the position of the Service that rules promulgated under section 4(d) of the Act concurrently with listing the species fall under the same rationale as outlined in the October 25, 1983, determination. For this reason, we did not conduct analysis under NEPA for the interim rule under section 4(d) of the Act. However, it is our intent to comply with NEPA standards at the time we publish either an affirmation of the interim 4(d) rule we are adopting in this document or a final rule amending the interim 4(d) rule based on comments we receive.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

In October 2013, Tribes and multi-tribal organizations were sent letters inviting them to begin consultation and coordination with the service on the proposal to listing the northern long-eared bat. In August 2014, several Tribes and multi-tribal organizations were sent an additional letter regarding the Service's intent to extend the deadline for making a final listing determination by 6 months. A conference call was also held with Tribes to explain the listing process and discuss any concerns. Following publication of the proposed rule, the Service established 3 interagency teams (biology of the northern long-eared bat, non-WNS threats, and conservation measures) to ensure that States, Tribes, and other Federal agencies were able to provide input into various aspects of the listing rule and potential conservation measures for the species. Invitations for inclusion in these teams were sent to Tribes within the range of the northern long-eared bat and a few tribal representatives participated on those teams. Two additional conference calls (in January and March 2015) were held with Tribes to outline the proposed species-specific 4(d) rule and to answer questions. Through this coordination, some Tribal representatives expressed concern about how listing the northern long-eared bat may impact forestry practices, housing development programs, and other activities on Tribal lands.

Clarity of the Interim 4(d) Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the 4(d) rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, or the sections where you feel lists or tables would be useful.

References Cited

A complete list of references cited in this document is available on the Internet at *http://www.regulations.gov* and upon request from the Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Twin Cities Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Bat, northern long-eared'' in alphabetical order under MAMMALS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Bat, northern long-eared.	*Myotis septentrionalis.*	U.S.A. (AL, AR, CT, DE, DC, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY); Canada (AB, BC, LB, MB, NB, NF, NS, NT, ON, PE, QC, SK, YT).	Entire	T	857	NA	17.40(o)
*	*	*	*	*	*		*

■ 3. Amend § 17.40 by adding paragraph (o) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(o) Northern long-eared bat (*Myotis septentrionalis*). The provisions of this rule are based upon the occurrence of white-nose syndrome (WNS), a disease affecting many U.S. bat populations. The term ''WNS buffer zone'' identifies the portion of the range of the northern long-eared bat within 150 miles of the boundaries of U.S. counties or Canadian districts where the fungus Pd or WNS has been detected. For current information regarding the WNS buffer zone, contact your local Service ecological services field office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed in 50 CFR 2.2.

(1) Outside the WNS buffer zone, the following provisions apply to the northern long-eared bat:

(i) *Prohibitions.* Except as noted in paragraphs (o)(1)(ii)(A) and (B) of this section, all the prohibitions and provisions of §§ 17.31 and 17.32 apply to the northern long-eared bat.

(ii) *Exceptions from prohibitions.* (A) Purposeful take:

(*1*) Take resulting from actions taken to remove northern long-eared bats from within human structures, if the actions comply with all applicable State regulations.

(*2*) Take resulting from actions relating to capture, handling, and related activities for northern long-eared bats by individuals permitted to conduct these same activities for other species of bat until May 3, 2016.

(B) Any incidental (non-purposeful) take of northern long-eared bats resulting from otherwise lawful activities.

(2) Inside the WNS buffer zone, the following provisions apply to the northern long-eared bat:

(i) *Prohibitions.* Except as noted in paragraphs (o)(2)(ii)(A) and (B) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the northern long-eared bat.

(ii) *Exceptions from prohibitions.* Take of northern long-eared bat is not prohibited in the following circumstances:

(A) Purposeful take:

(*1*) Take resulting from actions taken to remove northern long-eared bats from within human structures, if the actions comply with all applicable State regulations.

(*2*) Take resulting from actions relating to capture, handling, and related activities for northern long-eared bats by individuals permitted to conduct these same activities for other species of bat until May 3, 2016.

(B) Incidental take:

(*1*) Implementation of forest management, maintenance and expansion of existing rights-of-way and transmission corridors, prairie management, and minimal tree removal projects that:

(*i*) Occur more than 0.25 mile (0.4 kilometer) from a known, occupied hibernacula;

(*ii*) Avoid cutting or destroying known, occupied roost trees during the pup season (June 1–July 31); and

(*iii*) Avoid clearcuts (and similar harvest methods, *e.g.,* seed tree,

shelterwood, and coppice) within 0.25 mile (0.4 kilometer) of known, occupied roost trees during the pup season (June 1–July 31).

(*2*) Routine maintenance within an existing corridor or right-of-way, carried out in accordance with the conservation measures set forth at paragraph (o)(2)(ii)(B)(*1*).

(*3*) Expansion of a corridor or right-of-way by up to 100 feet (30 meters) from the edge of an existing cleared corridor or right-of-way, carried out in accordance with the conservation measures set forth at paragraph (o)(2)(ii)(B)(*1*).

(*4*) Removal of hazardous trees for the protection of human life and property.

Dated: March 23, 2015.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–07069 Filed 4–1–15; 8:45 am]

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Part VI

Securities and Exchange Commission

17 CFR Part 240
Exemption for Certain Exchange Members; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–74581; File No. S7–05–15]

RIN 3235–AL65

Exemption for Certain Exchange Members

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing to amend Rule 15b9–1 (''Rule'') under the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''), which exempts certain brokers or dealers from membership in a registered national securities association (''Association''). The proposed amendments would replace the current gross income allowance in the Rule with a narrower exemption from Association membership for a broker or dealer that carries no customer accounts and effects transactions on a national securities exchange. The proposed amendments would create an exemption for a dealer that effects transactions off the exchange of which it is a member solely for the purpose of hedging the risks of its floor-based activity, or a broker or dealer that effects transactions off the exchange resulting from orders that are routed by a national securities exchange of which it is a member, to prevent trade-throughs consistent with the provisions of Rule 611 of Regulation NMS.

DATES: Comments should be received on or before June 1, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–05–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–05–15. This file number should be included on the subject line if email is used. To help us 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/proposed.shtml*). Comments are also 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. 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.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: David Michehl, Special Counsel, at (202) 551–5627; Nicholas Shwayri, Special Counsel, at (202) 551–5667; or Charles Sommers, Attorney-Adviser, at (202) 551–5787, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Rule 15b9–1generally provides an exemption for certain broker-dealers from the Exchange Act requirement to become a member of an Association. However, the equities markets have undergone a substantial transformation since the Commission previously considered the Rule. Over time, active, cross-market proprietary trading firms began relying on the Rule 15b9–1 exemption in ways that were not envisioned when the Rule was adopted or amended. The Commission is proposing to amend Rule 15b9–1 to better align the scope of its exemption, in light of today's market activity, with Section 15(b)(8) of the Exchange Act and the Commission's purposes underlying the adoption of Rule 15b9–1.

When the Exchange Act was adopted in 1934, the exchanges were the only self-regulatory organizations (''SROs'') [1] and were charged with regulating the activities of their broker-dealer members.[2] Congress soon recognized, however, that the benefit of exchange regulation could be undermined by the absence of a complementary regulatory

[1] An SRO is defined, in relevant part, as ''any national securities exchange, registered securities association, or registered clearing agency. . . .'' 15 U.S.C. 78c(a)(26). *See also infra* notes 26–28 and accompanying text.

[2] *See, e.g.,* 15 U.S.C. 78f(b) (requiring exchanges to be so organized as to enforce compliance by their members and persons associated with their members with the provisions of the Exchange Act).

framework for the off-exchange market [3] and, in 1938, Congress provided for the creation of national securities associations.[4] Congress later mandated Association membership for all off-exchange market participants through Section 15(b)(8) of the Exchange Act,[5] which requires a broker-dealer to become a member of an Association unless it effects transactions solely on an exchange of which it is a member. This provision, among others, reflects an overarching principle in the Exchange Act that the SRO best positioned to conduct regulatory oversight should assume those responsibilities [6] and, correspondingly, that off-exchange trading is primarily the responsibility of an Association or Associations.

Section 15(b)(9) of the Exchange Act,[7] provides the Commission with authority to exempt any broker-dealer from the requirements of Section 15(b)(8), if that exemption is consistent with the public interest and the protection of investors. Pursuant to that authority, the Commission adopted Rule 15b9–1,[8] which was last substantively updated in 1983.[9] That Rule was intended to address the limited activities of exchange-based specialists and floor brokers that were conducted off the exchange of which they were a member and that were ancillary to their floor-based business.[10] Specifically, the Rule exempts a broker-dealer from the requirement to become a member of an Association if it is a member of a national securities exchange, carries no customer accounts, and has annual gross income of no more than $1,000 that is derived from securities transactions effected otherwise than on a national securities exchange of which it is a member (the ''*de minimis* allowance''). Importantly, the Rule permits income derived from transactions for the dealer's own account with or through another registered broker-dealer, to not count toward the $1,000 *de minimis* allowance (hereinafter, the ''exclusion for proprietary trading'').[11] As discussed more fully below, the *de minimis* allowance originally was designed to permit broker-dealers doing business on exchange floors to share in the commissions paid on occasional off-exchange transactions in customer accounts they introduced to other broker-dealers, up to a nominal amount.[12] In addition, when the exclusion for proprietary trading was adopted in 1976,[13] the circumstances under which an exchange specialist or floor broker would trade proprietarily off-exchange remained quite limited, such as when a regional exchange specialist would hedge risk on the primary listing market.[14]

[3] ''Off-exchange'' trading as used herein means any securities transaction in an exchange-listed security that is not effected, directly or indirectly, on a national securities exchange. *See* 17 CFR 240.600(b)(45) (defining ''national securities exchange''). Off-exchange trading includes securities transactions that occur on alternative trading systems and directly with a broker-dealer, acting either as agent or principal, and is also referred to as over-the-counter (''OTC'') trading. The term ''off-exchange'' as used herein does not refer, as it does in some contexts, to transactions in securities, either in equities or other instruments, that are not listed on a national securities exchange.

[4] *See infra* notes 31–33 and accompanying text (describing the early history and background behind the creation of national securities associations).

[5] 15 U.S.C. 78*o*(b)(8). Section 15(b)(8) of the Exchange Act was adopted in 1964. *See infra* notes 36–37 and accompanying text. Notably, however, from 1976–1983, broker-dealers engaged in off-exchange trading could either join an Association or be subject to direct regulation by the Commission under the SEC Only (''SECO'') Program. *See infra* notes 38–48 and accompanying text.

[6] As originally adopted in 1934, the regulation of broker-dealer activities on national securities exchanges was excluded from the Commission's authority. *See* Section 15 as adopted in 1934, Public Law 73–291, 48 Stat. 881, 895–96 (1934), *infra* note 27. Rather, regulation of broker-dealer activities on exchanges continued to be conducted by the exchanges themselves, many of which existed prior to the enactment of the Exchange Act. Consequently, this left regulation of the off-exchange market with the Commission, until passage of the Maloney Act in 1938, providing for the creation of voluntary, self-regulating Associations with powers to adopt and enforce rules to regulate the off-exchange market. Public Law 75–719, 52 Stat. 1070 (1938) (the ''Maloney Act''); *see also infra* note 23 and accompanying text.

In the Exchange Act Amendments of 1975 (Pub. L. 94–29, 89 Stat. 97 (1975), the ''1975 Amendments''), Congress recognized that, at the time, the allocation of self-regulatory responsibilities among SROs resulted in some cases in duplicative regulation of firms that were members of multiple SROs and varying standards, both in substance and enforcement, among SROs. S. Doc. No. 93–13 at 164–165 (1973). As a result, Congress adopted Section 17(d) of the Act, which provides the Commission with the authority to allocate regulatory responsibilities among SROs with respect to matters as to which, in the absence of such allocation, such SROs would share authority. 15 U.S.C. 78q(d). In adopting Section 17(d), a Senate Report accompanying the 1975 Amendments expressed the view that ''the Commission should play an affirmative role in allocating inspection and enforcement responsibilities among the self-regulatory organizations'' and that ''for reporting purposes each broker-dealer [should] be assigned to a designated principal self-regulator or government regulator who will be responsible for determining the broker-dealer's operating and financial status.'' *See* 1975 Amendments, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 33 (1975).

As a general matter, SROs and the Commission have used the flexibility provided by Section 17(d) of the Act to allocate regulatory responsibilities in such a manner. 15 U.S.C. 78q(d). *See, e.g.,* Exchange Act Release No. 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011) (order approving 17d–2 plan to allocate regulatory responsibility to FINRA relating to surveillance, investigation, and enforcement of insider trading rules); Exchange Act Release No. 70052 (July 26, 2013), 78 FR 46665 (August 1, 2013) (order approving 17d–2 plan to add Topaz Exchange, LLC to existing plan with all other options exchanges to allocate regulatory responsibility to FINRA relating to, among other things, opening of accounts, supervision, suitability, discretionary accounts, advertising, customer complaints, customer statements, disclosure documents, and certification of personnel); Exchange Act Release No. 73641 (November 19, 2014), 79 FR 70230 (November 25, 2014) (order approving 17d–2 plan to allocate regulatory responsibility to FINRA for the Miami International Securities Exchange, LLC (''MIAX''), with respect to examination and enforcement responsibility relating to compliance by common members with the substantially similar rules of the two SROs and applicable provisions of the federal securities laws). *See also infra* notes 62–63 and accompanying text (discussing the allocation of regulatory responsibilities among SROs).

[7] The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order. *See* 15 U.S.C. 78*o*(b)(9); Public Law 98–38, 97 Stat. 205 (1983).

[8] 17 CFR 240.15b9–1. *See also infra* notes 38–48 and accompanying text for a discussion on Rule 15b8–1, the predecessor to Rule 15b9–1.

[9] *See* SECO Programs; Direct Regulation of Certain Broker-Dealers; Elimination, Exchange Act Release No. 20409 (November 22, 1983), 48 FR 53688 (November 29, 1983) (''SECO Programs Release'').

[10] *See infra* note 22 and accompanying text (explaining that the Rule is limited to receipt of a portion of the commissions paid on occasional over-the-counter transactions and certain other activities incidental to their activities as specialists).

[11] The exclusion for proprietary trading (conducted with or through another registered broker-dealer) was not part of the original exemption, but was added in 1976. *See infra* notes 43–44 and accompanying text.

[12] *See* Qualifications and Fees Relating to Brokers or Dealers Who Are Not Members of National Security [sic] Association, Exchange Act Release No. 7697 (September 7, 1965), 30 FR 11673, 11675 (September 11, 1965) (''Qualifications and Fees Release'') (describing specialist or floor broker's proprietary off-exchange activity as generally limited to occasional commissions on introduced accounts and other transactions incidental to their activity as specialists or floor brokers). *See also infra* note 22.

[13] In adopting the exclusion for proprietary trading, the Commission indicated that an exchange floor broker, through another broker-dealer, could effect transactions for its own account on an exchange of which it was not a member. The Commission noted that such transactions ultimately would be effected by a member of that exchange. *See* Extension of Temporary Rules 23a–1(T) and 23a–2(T); Adoption of Amendments to SECO Rules, Securities Exchange Act Release No. 12160 (March 3, 1976), 41 FR 10599, 10600 (March 12, 1976) (''Adoption of Amendments to SECO Rules''). *See also infra* note 44.

[14] In the Special Study of the Securities Markets in 1963, the Commission described how regional exchange specialists reduced their exposure, including by offsetting those positions on other exchanges. The Commission noted that ''[s]pecialists on the Boston, Philadelphia-Baltimore-Washington, Pittsburgh, and Montreal stock exchange are in communication with each other by direct wires linking their floors and each may trade on the other exchanges at member rates''

Continued

Accordingly, those broker-dealers exempt from Association membership pursuant to Rule 15b9–1 when it was first adopted were broker-dealers with a business focused on the floor of an exchange of which they were a member.[15] The Commission crafted Rule 15b9–1 to accommodate limited activities ancillary to that floor-based business, and thereby left it to the exchange of which the specialist or floor broker was a member to continue to regulate the entirety of that broker-dealer's activities. Therefore, the scope of Rule 15b9–1 originally was consistent with the principle underlying Section 15(b)(8) of the Exchange Act, noted above, that the SRO best positioned to conduct regulatory oversight should assume those responsibilities.

However, the equities markets have undergone a substantial transformation since the Commission previously considered Rule 15b9–1, evolving from markets with both manual and automated features and trading volumes concentrated on the primary listing exchanges, to a highly electronic, decentralized market with substantial competition among a large number and great variety of trading venues.[16] New types of proprietary trading firms have emerged, including those that engage in so-called high-frequency trading strategies. These firms tend to effect transactions across the full range of exchange and off-exchange markets, including alternative trading systems (''ATSs'').[17] They also tend to use complex electronic trading strategies and sophisticated technology to generate a large volume of orders and transactions throughout the national market system.[18]

Over time, active, cross-market proprietary trading firms began relying on the Rule 15b9–1 exemption in ways that were not envisioned when the Rule was adopted or amended.[19] As noted above, the *de minimis* allowance of Rule 15b9–1, and the subsequent exclusion of income derived from proprietary transactions conducted with or through another registered broker-dealer from such allowance, were designed to permit exchange-based specialists or floor brokers to conduct limited activities off-exchange. However, because the Rule does not explicitly limit this exclusion from the *de minimis* allowance to dealer activities ancillary to a floor-based business, a broker-dealer, with or without a floor presence, may engage in unlimited proprietary trading in the off-exchange market without becoming a member of an Association. Consequently, many of the most active, cross-market proprietary trading firms have been able to rely on the exemption from Association membership, despite effecting a significant volume of transactions off-exchange.

As a result, an exemption that was developed to address limited off-exchange activity by exchange-based specialists or floor brokers is today being used by many broker-dealers without a floor-based business, and that conduct a substantial percentage of the volume of off-exchange trading in the U.S. securities markets. Specifically, during the fourth quarter of 2014, broker-dealers that are not Association[20] members (''Non-Member Firms'') accounted for 45% of orders sent directly to ATSs, a significant category of off-exchange trading venue.[21] Preliminarily, the Commission does not believe the public interest finding that originally supported the adoption and amendments of Rule 15b9–1continues to apply today in this context.

Accordingly, the Commission is proposing to amend Rule 15b9–1 to better align the scope of its exemption, in light of today's market activity, with Section 15(b)(8) of the Exchange Act and the Commission's original purpose in adopting Rule 15b9–1, which was to accommodate broker-dealer activities ancillary to a floor-based business while preserving the traditional role of the exchange as the entity best suited to regulate member conduct on the exchange.[22] A broker-dealer that

and ''[s]pecialists who are sole members [of an exchange] also offset [their positions] with over-the-counter houses dealing in listed securities. Many of the offsetting transactions are done on the primary market, the NYSE, with the [specialist] buying or selling on that exchange as his needs dictate.'' Report of Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 88–95, at 935 (1963) (''Special Study''). The Commission believes that the business of regional exchange specialists was substantially the same when the exclusion for proprietary trading in Rule 15b9–1 was adopted in 1976.

[15] *See infra* note 22.

[16] *See* Concept Release Concerning Equity Market Structure, Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3594–3596 (January 21, 2010) (''Concept Release'') (discussing the evolution from ''a market structure with primarily manual trading to a market structure with primarily automated trading'').

[17] ATSs fall within the statutory definition of national securities exchange, but are exempt from having to register as an exchange if they comply with Regulation ATS. *See* Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70856 (December 22, 1998). Regulation ATS requires ATSs to be registered as broker-dealers with the Commission, which entails becoming a member of an Association and complying with the broker-dealer regulatory regime. 17 CFR 242.301(b)(1). Unlike a registered national securities exchange, an ATS is not required to file proposed rule changes with the Commission. ATSs include both dark pools and electronic communications networks (''ECNs''). ECNs provide their best-priced orders for inclusion in the consolidated quotation data, while dark pools do not. *See* Concept Release, *supra* note 16 at 3599. *See also infra* notes 158—161 and accompanying text (describing some of these firms' activity on exchanges). ATSs did not exist when Rule 15b9–1 was last amended in 1983.

[18] Many, but not all, such proprietary trading firms are often characterized by: (1) The use of extraordinarily high-speed and sophisticated computer programs for generating, routing and executing orders; (2) the use of co-location services and individual data feeds offered by exchanges and others to minimize network and other types of latencies; (3) the use of very short time-frames for establishing and liquidating positions; (4) the submission of numerous orders that are cancelled shortly after submission; and (5) ending the trading day in as close to a flat position as possible (that is, not carrying significant, unhedged positions over night). *See* Concept Release, *supra* note 16, at 3606. *See also* Staff of the Division of Trading and Markets, Commission, ''Equity Market Structure Literature Review, Part II: High Frequency Trading,'' at 4–5 (March 18, 2014) (*available at http://www.sec.gov/marketstructure/research/hft_lit_review_march_2014.pdf*).

[19] These firms are registered with the Commission as broker-dealers but have elected to avail themselves of the Rule 15b9–1 exemption from membership in an Association.

[20] Financial Industry Regulatory Authority, Inc. (''FINRA'') is currently the sole Association. *See infra* note 34. In 1939, the Commission approved the National Association of Securities Dealers, Inc. (''NASD'') as the first national securities association. *See* 4 FR 3564 (August 9, 1939). In 2007, the Commission approved changes that consolidated the member firm regulatory functions of the NASD, an Association, and NYSE Regulation, Inc., and changed the name of the combined entity to FINRA. *See* Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007).

[21] ATSs received approximately 230 billion orders during 2014 that were sent directly to an ATS (*i.e.,* orders received by a broker-dealer that are then sent to another trading desk of that broker-dealer (so called ''desk-reports'') are generally excluded from these order totals). Orders from Non-Member Firms accounted for 49% of orders sent directly to ATSs during the first quarter of 2014, 49% of orders sent directly to ATSs during the second quarter of 2014, 48% of orders sent directly to ATSs during the third quarter of 2014, and 45% of orders sent directly to ATSs during the fourth quarter of 2014. In 2013, ATSs received approximately 163 billion orders that were sent directly to an ATS. Orders from Non-Member Firms accounted for 34% of orders sent directly to ATSs during the first quarter of 2013, 38% of orders sent directly to ATSs during the second quarter of 2013, 42% of orders sent directly to ATSs during the third quarter of 2013, and 45% of orders sent directly to ATSs during the fourth quarter of 2013. On a volume-weighted basis (*i.e.,* accounting for variations in total order volume sent to ATSs), Non-Member Firms accounted for 48% of orders sent directly to ATSs in 2014, 40% in 2013, and 32% in 2012. This information is from data obtained from FINRA's Order Audit Trail System (''OATS'').

[22] In adopting Rule 15b8–1, the Commission stated: ''Among the broker-dealers that are not members of a registered national securities association are several specialists and other floor members of national securities exchanges, some of whom introduce accounts to other members. The over-the-counter business of these broker-dealers may be limited to receipt of a portion of the commissions paid on occasional over-the-counter transactions in these introduced accounts, and to certain other transactions incidental to their activities as specialists. In most cases, the income derived from these activities is nominal.'' *See*

conducts off-exchange transactions outside the limited scope of Rule 15b9–1, as proposed to be amended, would be required to become a member of an Association. Consequently, such a broker-dealer would be subject, with respect to its off-exchange transactions, to the oversight and rules of an Association, the category of SRO primarily responsible for regulating trading in the off-exchange market in accordance with Section 15(b)(8).[23] Further, as a result of the proposal, a broker-dealer that does not trade off-exchange but that trades indirectly on multiple exchanges would be required in accordance with Section 15(b)(8), to become a member of an Association, or alternatively, a member of each exchange where it effects transactions other than transactions to hedge the risks of its floor-based activities.

A. Regulatory History

The primary purpose of an SRO is to regulate its members.[24] Although the Act provides a limited and targeted exception to Association membership requirements for broker-dealers, its approach to effecting supervision is relatively uniform: Broker-dealers must be members of the SROs that regulate the venues upon which they transact. Section 19(g)(1) of the Act, among other things, requires every SRO to examine for and enforce compliance by its members and associated persons with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[25] A primary purpose of an Association as an SRO, among other things, is to regulate the off-exchange market.[26] Under the Exchange Act, as adopted in 1934, the direct regulation of broker-dealer activities on national securities exchanges was to be conducted by the exchanges themselves. As there was no SRO for the off-exchange market, regulation of the off-exchange market was to be the Commission's responsibility.[27] Congress recognized that the benefits of exchange regulation could be undermined in the absence of a complementary regulatory framework for the off-exchange market[28] and provided the Commission the authority to adopt rules and regulations concerning the off-exchange market to achieve investor protections comparable to those on exchanges.[29] After further study,[30] however, in 1938 Congress imposed a comprehensive regulatory framework for the off-exchange market through the Maloney Act.[31] The Maloney Act added Section 15A to the Act,[32] providing for the creation of national securities associations of broker-dealers, with powers to adopt and enforce rules to regulate the off-exchange market.[33] This led to the creation of NASD, the predecessor of FINRA, and the only Association[34] registered to date.[35]

Section 15(b)(8) of the Act, enacted in 1964,[36] further strengthened regulatory

Qualifications and Fees Release, *supra* note 12, at 11675.

[23] *See* Public Law 75–719, 52 Stat. 1070 (1938) (The Maloney Act, which established the concept of and framework for Associations, states in its preamble that its purpose was to provide for the establishment of a mechanism of regulation [Associations] among over-the-counter brokers and dealers operating in interstate and foreign commerce or through the mails, to prevent acts and practices inconsistent with just and equitable principles of trade, and for other purposes). *See also infra* notes 26, 28–33 and accompanying text (describing the early history of the Maloney Act).

[24] *See, e.g.,* S. Doc. No. 93–13 at 147 (1973) (describing the structure of the self-regulatory system in which SROs ''are delegated governmental power in order to enforce, at their own initiative, compliance by members of the industry with legal and ethical standards going beyond the basic requirements laid down in the Act.'').

[25] 15 U.S.C. 78q(d); 15 U.S.C. 78s(g).

[26] The Maloney Act authorizes an Association to, among other things, establish rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. *See* 15 U.S.C 78*o*-3(b)(6). *See also First Jersey Sec., Inc.* v. *Bergen,* 605 F.2d 690, 692 (3d Cir. 1979) (''The purpose of [NASD] is to provide self-regulation of the over-the-counter securities market.''); Special Study, *supra* note 14, at 65 (describing the NASD as ''the agency with primary self-regulatory responsibility for over-the-counter markets.'').

[27] As adopted in 1934, Section 15 of the Exchange Act read, in relevant part: ''It shall be unlawful, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest and to insure to investors protection comparable to that provided by and under authority of this title in the case of national securities exchanges, (1) for any broker or dealer . . . to make or create, a market, otherwise than on a national securities exchange, for both the purchase and sale of any security . . . or (2) for any broker or dealer to use any facility of any such market. Such rules and regulations may provide for the regulation of all transactions by brokers and dealers on any such market, for the registration with the Commission of dealers and/or brokers making or creating such a market, and for the registration of the securities for which they make or create a market and may make special provision with respect to securities or specified classes thereof listed, or entitled to unlisted trading privileges, upon any exchange on the date of the enactment of this title, which securities are not registered under the provisions of section 12 of this title.'' Public Law 73–291, 48 Stat. 881, 895–96 (1934).

[28] In considering adopting the Maloney Act, the House noted that: ''The committee has been convinced that effective regulation of the exchanges requires as a corollary a measure of control over the over-the-counter markets. The problem is clearly put in the recent report of the Twentieth Century Fund on 'Stock Market Control': 'The benefits that would accrue as the result of raising the standards of security exchanges might be nullified if the over-the-counter markets were left unregulated and uncontrolled. . . . To leave the over-the-counter markets out of a regulatory system would be to destroy the effects of regulating the organized exchanges.''' H.R. Doc No. 1383, 73d Cong. 2d Sess. at 4 (1934) (quoting report on ''Stock Market Control'' by the Twentieth Century Fund).

[29] *Id.*

[30] *See* Statement of Senator Francis T. Maloney, Hearings before Committee on Banking and Currency on S. 3255, 75th Cong., 3d Sess. (1938) (noting that the Maloney Act came after ''a long-time effort on the part of the Securities and Exchange Commission in rather close cooperation with members of the investment banking business and over-the-counter dealers and brokers.'').

[31] Public Law 75–719, 52 Stat. 1070 (1938).

[32] 15 U.S.C. 78*o*-3.

[33] *Id.; see also* S. Rep. No. 75–1455, at 3–4 (1938) (''The committee believes that there are two alternative programs by which this problem [of regulation of the off-exchange market] could be met. The first would involve a pronounced expansion of the organization of the Securities and Exchange Commission; the multiplication of branch offices; a large increase in the expenditure of public funds; an increase in the problem of avoiding the evils of bureaucracy; and a minute, detailed, and rigid regulation of business conduct by law. . . . The second of these alternative programs, which the committee believes distinctly preferable to the first . . . is based upon cooperative regulation, in which the task will be largely performed by representative organizations of investment bankers, dealers, and brokers, with the Government exercising appropriate supervision in the public interest, and exercising supplementary powers of direct regulation.''). *See also* S. Rep. No. 74–1455, at 2–3 (1938) (''It has been deemed advisable to authorize the Commission to subject such activities [*i.e.,* trading in the over-the-counter markets] to regulation similar to that prescribed for transactions on organized exchanges. This power is vitally necessary to forestall the widespread evasion of stock-exchange regulation by the withdrawal of securities from listing on exchanges, and by transferring trading therein to 'over-the-counter' markets where manipulative evils could continue to flourish, unchecked by any regulatory authority'') (quoting S. Rep. No. 73–792, at 6 (1934)). *See also supra* note 26.

[34] *See supra* note 20. The National Futures Association (''NFA''), as specified in Section 15A(k) of the Act, also is registered as a national securities association, but only for the limited purpose of regulating the activities of NFA members that are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.

[35] The existing self-regulatory structure in which an Association serves as the regulator of the off-exchange market and exchanges focus their regulatory supervision on their respective markets has not been materially altered from a statutory perspective since its establishment. *See* Concept Release Concerning Self-Regulation, Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256, 71258 (December 8, 2004).

[36] Section 15(b)(8) as enacted provided that no broker or dealer registered under section 15 of this title shall, during any period when it is not a member of a securities association registered with the Commission under section 15A of this title, effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange) unless such broker or dealer and all natural persons associated with such broker or dealer meet such specified and appropriate standards with respect to training, experience, and

Continued

oversight of the off-exchange market by prohibiting a broker-dealer from effecting any transaction ''otherwise than on a national securities exchange'' unless the broker-dealer was either a member of an Association, or met the Commission's standards with respect to training, experience, and other relevant qualifications.[37] In 1965, the Commission adopted Rule 15b8–1 to establish the SECO Program, which provided for the direct regulation by the Commission of broker-dealers that effected transactions off-exchange and that chose not to join an Association.[38]

Rule 15b8–1 provided for an exemption from the SECO Program, and by extension from Association membership, for those broker-dealers that: (1) Were members of a national securities exchange; (2) did not carry customer accounts; and (3) had annual gross income derived from off-exchange activity that amounted to no greater than $1,000.[39] This set the basic framework for the Rule 15b9–1 exemption from Association membership that exists today. The Commission recognized that, at that time, exchange-based specialists and other floor brokers, which were comprehensively regulated by the exchange of which they were a member, occasionally introduced accounts to other members and shared in the commission revenues.[40] Rule 15b8–1 permitted these broker-dealers, who were not required to register with the Commission as broker-dealers at the time,[41] to receive a portion of the commissions paid on occasional off-exchange transactions on these introduced accounts without becoming subject to the SECO rules and broker-dealer registration, so long as the income derived from those activities was nominal.[42]

In 1976, the Commission amended Rule 15b8–1 to provide that income derived from transactions for the dealer's own account effected with or through another registered broker-dealer would not count towards the $1,000 *de minimis* allowance.[43] In adopting this amendment to Rule 15b8–1, the Commission noted that an exchange-based floor broker could effect transactions through another broker-dealer for its own account on an exchange of which it was not a member, and indicated that such transactions ultimately would be effected by a member of that exchange.[44] At the time this provision was adopted, the circumstances under which an exchange specialist or floor broker would trade proprietarily off the exchange were quite limited, such as when a regional exchange specialist would hedge risk on the primary listing market.[45]

In 1983, Congress amended the Act to eliminate the direct oversight of broker-dealers by the Commission.[46] Congress maintained the exception from membership in an Association in Section 15(b)(8) of the Act for those broker-dealers that effected transactions in securities only on an exchange of which they were a member. Congress also left unchanged the ability of the Commission to expand upon the statutory exception in Section 15(b)(8) through exemptive authority in Section 15(b)(9) of the Act.[47] When the SECO rules were abolished in 1983, the Commission amended and renumbered Rule 15b8–1.[48] The substance of newly renumbered Rule 15b9–1 remained largely the same as Rule 15b8–1, with modifications that primarily accommodated transactions effected through the new Intermarket Trading System (''ITS'') linkage,[49] and eliminated references to, and requirements under, the SECO Program.

Under the Rule as amended in 1983, a broker-dealer was not required to become a member of an Association if:

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such other qualifications as the Commission finds necessary or desirable. *See* Public Law 88–467, 78 Stat. 565, 572–73 (1964).

[37] In the Special Study, the Commission explained that the controls over entry into the securities business were inadequate, allowing entry by unqualified persons. Special Study, *supra* note 14, at 1, 23 (1963). Congress' amendments in 1964 responded to these findings.

[38] Under the SECO Program, every associated person engaged directly or indirectly in securities activities for or on behalf of a non-member broker-dealer, and every associated person who supervised others engaged in any securities activities, was required to successfully complete either the general securities examination prescribed by the Commission or an alternative examination deemed satisfactory by the Commission. *See* Qualifications and Fees Release, *supra* note 12, at 11676 (defining the term ''nonmember broker or dealer'' as ''any broker or dealer, including a sole proprietor, registered under section 15 of the Act, who is not a member of a national securities association registered with the Commission under section 15A of the Act.''). Any broker-dealer could choose to join an Association or be regulated by the Commission directly under the SECO Program.

[39] ''Under Rule 15b8–1 (17 CFR 240.15b8–1), any broker-dealer who is a member of a national securities exchange is exempt from the rule if he does not carry customers' accounts and if his annual gross income derived from his over-the-counter business is no more than $1,000. Should a broker-dealer's over-the-counter income exceed these limits for an accounting year, such broker-dealer and all persons associated with him become subject to the requirements of the rule.'' *Id.* at 11675.

[40] *See supra* note 22.

[41] Until 1975, broker-dealers who traded exclusively on the floor of a national securities exchange were exempt from registration with the Commission. The 1975 Amendments required all broker-dealers, including exchange specialists and floor brokers, to register with the Commission, and extended the Commission's SECO rulemaking authority to any exchange member trading on an exchange other than an exchange of which it was a member. 1975 Amendments, *supra* note 6, at 121. The 1975 Amendments revised Section 15(b) such that the substance of then existing Section 15(b)(8) was captured in Sections 15(b)(7) through (9). *See id.* at 131. One purpose of the 1975 Amendments was to assure that the Commission could regulate and recoup the costs of regulating transactions of exchange members conducted on exchanges of which they were not a member. *See* 1975 Amendments, *supra* note 6, at 125 (amending Section 15 of the Exchange Act to provide the Commission with authority to ''prescribe reasonable fees and charges to defray its costs'' of regulation).

[42] *See* Adoption of Amendments to SECO Rules, *supra* note 13. *See also supra* note 22 (noting that the over-the-counter business of these broker-dealers may be limited and the income derived from these activities is nominal).

[43] ''Any nonmember broker or dealer who is a member of a national securities exchange shall be exempt from this rule if (1) he carries no accounts of customers, and (2) his annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which he is a member is an amount no greater than $1,000. *Provided however,* [t]hat gross income derived from transactions otherwise than on such national securities exchange which are effected for his own account with or through another registered broker or dealer shall not be subject to such limitation.'' *See* Adoption of Amendments to SECO Rules, *supra* note 13, at 10601. Thus, broker-dealers registering with the Commission as a result of the 1975 Amendments became subject to the SECO rules in 1976, but could remain exempt from such rules pursuant to Rule 15b8–1 and its exclusion for proprietary trading.

[44] The Commission provided the following example to describe the application of the exclusion for proprietary trading: ''a broker who is acting as a floor broker on a particular exchange, and who effects transactions for his own account otherwise than on that exchange through another broker-dealer who acts as a clearing member for the floor broker, would be permitted to effect transactions on exchanges of which neither he nor his clearing broker are members without becoming subject to the SECO rules.'' *Id.* In this example, ''[t]he clearing broker would, of course, effect transactions on an exchange of which he was not a member through a member of that exchange.'' *Id.* at 10602, n. 8.

[45] *See supra* note 14.

[46] At that time, direct oversight of broker-dealers by the Commission was conducted through the SECO Program. 15 U.S.C. 78*o*(b)(8), as amended by Pub. L. 98–38, 97 Stat. 205, 206 (1983). *See also* H.R. Rep. No. 98–106, at 597 (1983) (citing a preference for self-regulation over direct regulation by the Commission. Among other benefits of self-regulation, the report noted that NASD had available a broader and more effective range of disciplinary sanctions to employ against broker-dealers than had the Commission).

Section 15(b)(8) is virtually the same as it was in 1983: ''It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than or commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member.'' 15 U.S.C. 78*o*(b)(8). In 1986, Congress enacted non-substantive amendments modifying a few terms in the statute. Public Law 99–571, 100 Stat. 3208, 3218 (1986). 15 U.S.C. 78*o*(b)(8).

[47] *See supra* note 7.

[48] *See supra* note 9.

[49] *See infra* notes 126–130 and accompanying text.

(1) It was a member of a national securities exchange, (2) carried no customer accounts, and (3) had annual gross income no greater than $1,000 that was derived from securities transactions effected otherwise than on a national securities exchange of which the broker-dealer was a member.[50] As under the SECO rules, income derived from transactions effected for a broker-dealer's own account with or through another broker or dealer was not included in the $1,000 *de minimis* allowance.[51]

Since 1983, Rule 15b9–1 has remained unchanged, except for a technical amendment in 2005 to update cross-references when the Commission adopted Regulation NMS.[52]

B. Regulatory Oversight of Off-Exchange Trading Activity

Section 19(g)(1) of the Act requires every SRO to examine for and enforce compliance by its members and associated persons with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[53] Without this relief, the statutory obligation of each individual SRO would result in duplicative examinations and oversight of broker-dealers that are members of more than one SRO (''common members''). Section 17(d)(1) of the Act is intended, in part, to eliminate overlapping examinations and regulatory functions.[54] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with the applicable statutes, rules, and regulations, or to perform other specified regulatory functions.[55]

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[56] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by the Commission or SRO rules.[57] To address regulatory duplication in areas other than financial responsibility, including sales practices and trading practices, the Commission adopted Rule 17d–2 under the Act.[58] Rule 17d–2 permits SROs to propose joint plans among two or more SROs for the allocation of regulatory responsibility with respect to their common members.[59] The regulatory responsibility allocated among SROs only extends to matters for which the SROs would share authority, which means that only common rules among SROs can be allocated under Rule 17d–2. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after appropriate notice and opportunity for comment, it finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among SROs, or to remove impediments to and foster the development of a national market system and a national clearance and settlement system and in conformity with the factors set forth in Section 17(d) of the Act.[60] Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.[61]

The principle underlying the self-regulatory structure in the Exchange Act is the concept that the SRO best positioned to conduct regulatory oversight should assume responsibility for that oversight.[62] As a general matter, the SROs and the Commission have used the flexibility provided by Section 17 to allocate responsibilities in such a manner.[63] Section 15(b)(8) of the Exchange Act further implements this construct of effective regulatory oversight by requiring Association membership of a broker-dealer unless it effects transactions solely on an exchange of which it is a member. Those exempt from Association membership pursuant to Rule 15b9–1 originally were exchange specialists and other floor members, and the off-exchange activity permitted under Rule 15b9–1 (including its predecessor rule) was intended only to accommodate limited activities ancillary to that floor-based business.

As the sole currently registered Association, FINRA is the SRO primarily responsible for regulating trading in the off-exchange market.[64] FINRA also conducts the vast majority of broker-dealer examinations,[65] mandates broker-dealer disclosures, and writes and enforces rules governing broker-dealer conduct.[66] FINRA regulates trading in non-listed equities, fixed income, and other traded products, and investigates and brings enforcement actions against members for violations of its rules, the rules of the Municipal Securities Rulemaking Board, and the Exchange Act and the rules thereunder.[67] As noted above, the regulatory focus of national securities exchanges, which are also SROs, has been more narrow, with primary

[50] Any broker or dealer required by Section 15(b)(8) of the Act to become a member of a registered national securities association shall be exempt from such requirement if it is a member of a national securities exchange, carries no customer accounts, and has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than $1,000. *See* 17 CFR 240.15b9–1(a); *see also* SECO Programs Release, *supra* note 9, at 53690.

[51] The gross income limitation contained in paragraph (a) of 17 CFR 240.15b9–1, shall not apply to income derived from transactions for the dealer's own account with or through another registered broker or dealer, or through the Intermarket Trading System. *See* 17 CFR 240.15b9–1(b); SECO Programs Release, *supra* note 9, at 53690.

[52] Regulation NMS, Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37618 (June 29, 2005).

[53] 15 U.S.C. 78s(g).

[54] *See* 1975 Amendments, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[55] 15 U.S.C. 78q(d)(1).

[56] 17 CFR 240.17d–1; 17 CFR 240.17d–2.

[57] *See* Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[58] *See* Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[59] Any two or more self-regulatory organizations may file with the Commission a plan . . . for allocating among the self-regulatory organizations the responsibility to receive regulatory reports from persons who are members or participants of more than one of such self-regulatory organizations to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Securities Exchange Act of 1934, the rules and regulations thereunder, and the rules of such self-regulatory organizations, or to carry out other specified regulatory functions with respect to such persons. *See* 17 CFR 240.17d–2.

[60] *Id.*

[61] *Id.* Exchanges also enter into Regulatory Services Agreements (''RSAs'') whereby one SRO contractually agrees to perform regulatory services for another. *See, e.g.,* FINRA News Release, FINRA Signs Regulatory Services Agreement with the Chicago Board Options Exchange, Incorporated (''CBOE'') and C2 Options Exchange, Incorporated (''C2'') (December 22, 2014), *available at http://www.finra.org/newsroom/newsreleases/2014/p602174*. However, RSAs do not relieve the contracting SRO from regulatory responsibility for the performance of any regulatory services allocated pursuant to the RSA and are not filed with the Commission for approval.

[62] Section 17(d)(1) of the Act provides that the Commission, in allocating authority among SROs pursuant to Section 17(d)(1), shall take into consideration the regulatory capabilities and procedures of the self-regulatory organizations, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, cooperation and coordination among self-regulatory organizations, and the development of a national market system. *See* 15 U.S.C. 78q(d)(1).

[63] *See supra* note 6; *infra* note 69.

[64] *See supra* note 31.

[65] The Commission staff also conducts risk-based examinations of broker-dealers. However, routine broker-dealer examinations are conducted by the SROs, and the Commission staff oversees the examination efforts of the SROs.

[66] 15 U.S.C. 78*o*–3.

[67] *Id.*

responsibility to regulate trading by their members on their respective exchanges,[68] enforce conduct rules (if they have not been relieved of that responsibility by 17d–2 Agreements), and otherwise perform member regulation for their members that are not also members of FINRA. Most exchanges have entered into 17d–2 Agreements with FINRA that allocate regulatory responsibility over common members to FINRA for compliance with common conduct rules.[69]

FINRA has developed a transparency and regulatory regime for the off-exchange market. All off-exchange trades are reported to FINRA,[70] and as a result FINRA has developed a set of trade reporting rules to support that transparency regime.[71] FINRA also has developed a regulatory audit trail, which provides regulatory data on orders, quotes, routes, cancellations, and executions.[72] FINRA has developed rules and guidance tailored to trading activity[73] and has developed surveillance technology and specialized regulatory personnel to provide surveillance, supervision, and enforcement of activity occurring off-exchange.[74] Furthermore, FINRA has a detailed set of member conduct rules that apply to all activities of a firm, whether on- or off-exchange.[75]

As noted, Rule 15b9–1 in its current form allows a broker-dealer to engage in unlimited proprietary trading in the off-exchange market without becoming a member of an Association, so long as its proprietary trading activity is conducted with or through another registered broker-dealer (*i.e.,* not with a customer). In practice, this allows many cross-market proprietary trading firms to avoid Association membership, despite their effecting a significant volume of transactions in the off-exchange market. Non-Member Firms are not subject to oversight by an Association and their off-exchange transactions typically are not overseen by the exchanges of which they may be members. Exchanges traditionally have not assumed the role of regulating the totality of the trading of their member-broker-dealers, and exchanges are currently not well-positioned to assume that role, in light of the statutory scheme and, among other things, their limited access to data[76] and the proper rule set to regulate off-exchange trading. Exchanges generally do not have a detailed set of member conduct rules and non-exchange-specific trading rules, thus allowing such broker-dealers and their personnel to conduct business under a less specific regulatory regime than FINRA members. In this context and consistent with the statutory framework that places responsibility for off-exchange trading with an Association, therefore, the Commission preliminarily believes that an Association is better suited to regulate off-exchange trading.

The Commission estimates that, today, there are approximately 125 broker-dealers exempt from Association membership.[77] This group includes some of the most active cross-market proprietary trading firms, which generate a substantial volume of orders and transactions in the off-exchange market. For example, the Commission estimates that orders from Non-Member Firms represented a volume-weighted average of approximately 32% of all orders sent directly to ATSs during 2012.[78] By 2014, these Non-Member Firms represented a volume-weighted average of approximately 48% of orders sent directly to ATSs.[79]

Accordingly, the Commission believes that many of the broker-dealers today that rely on the Rule 15b9–1 exemption are very different from those for which the Rule originally was intended—exchange-based specialists and other floor members that focused their business on a single exchange of which they were a member. The presumption built into Section 15(b)(8) and further extended by Rule 15b9–1, namely that the exchange of which the firm is a member is in the optimal position to provide self-regulatory oversight, does not appear to hold for those firms that avail themselves of the exemption but are engaged in a significant amount of off-exchange trading.[80] For broker-dealers that conduct business only on one exchange, the exchange SRO is well-positioned to oversee the activities of those broker-dealers and write and enforce rules tailored to their business model and conduct. For a broker-dealer that trades electronically across a range of exchange and off-exchange venues, however, the individual exchange or exchanges of which the broker-dealer may be a member are not able to as effectively regulate the off-exchange activity of the broker-dealer because such exchange(s) today has neither the

[68] Congress saw the codification of the regulations requiring the registration of off-exchange broker-dealers as ''an essential supplement to regulation of the exchanges.'' H.R. Rep. No. 74–2601, at 4 (1936). *See also supra* note 28 and accompanying text.

[69] *See, e.g.,* Exchange Act Release No. 63430 (December 3, 2010), 75 FR 76758 (December 9, 2010) (order approving Rule 17d–2 plan to allocate regulatory responsibility to FINRA for certain Regulation NMS rules by 13 exchanges). Generally, FINRA is also the DEA for financial responsibility rules for exchange members that also are members of FINRA. *See infra* note 164 (discussing DEAs).

[70] FINRA operates two Trade Reporting Facilities (''TRFs''), one jointly with NASDAQ and another with the NYSE. The TRFs are FINRA facilities for FINRA members to report transactions effected otherwise than on an exchange. *See* Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving the NASDAQ TRF); Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) (notice of filing and immediate effectiveness of a proposed rule change to establish the NYSE TRF). In addition, FINRA operates the Alternative Display Facility (''ADF''), which is a FINRA facility for posting quotes and reporting trades governed by FINRA's trade reporting rules. *See* Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (order approving the ADF); *see also* Exchange Act Release No. 71467 (February 3, 2014), 79 FR 7485 (February 7, 2014) (order approving a proposed rule change to update the rules governing the ADF).

[71] *See* FINRA Rule 7000 Series—Clearing, Transactions and Order Data Requirements, and Facility Charges.

[72] FINRA operates the OATS system, which is an integrated audit trail of order, quote, and trade information for all NMS stocks and OTC equity securities required to be submitted by FINRA members. *See e.g.,* Exchange Act Release No. 54585 (October 10, 2006), 71 FR 61112 (October 17, 2006) (order approving a proposed rule change relating to the expansion of OATS reporting requirements to OTC equity securities). FINRA uses the OATS audit trail system to recreate events in the life cycle of orders and more completely monitor the trading practices of FINRA member firms. *See* FINRA.org, Order Audit Trail System (OATS), *available at http://www.finra.org/industry/oats* (last visited March 19, 2015).

[73] *See e.g.,* FINRA Rules 5240 (Anti-Intimidation/Coordination), 5250 (Payments for Market-Making), 5210.02 (Publication of Transactions and Quotations—Self-Trades), and 6140 (Other Trading Practices).

[74] *See* FINRA.org, FINRA 2013 Year in Review and Annual Financial Report, *available at http://www.finra.org/sites/default/files/Corporate/p534386.pdf* (last visited March 19, 2015).

[75] *See* Part V.B.4 discussing the competitive effects of off-exchange market regulation.

[76] *See* Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45728–30 (August 1, 2012) (discussing the use and limitations of current SRO audit trails and noting that ''[m]ost SROs maintain their own specific audit trails applicable to their members'' and ''each SRO only has direct access to its own audit trails . . .'').

[77] The Commission believes that the majority of these firms rely on the Rule 15b9–1 exemption rather than the statutory exception from Association membership under Section 15(b)(8) of the Act, 15 U.S.C. 78*o*(b)(8), because the Rule-based exemption is more permissive than the statute, allowing, for example, unlimited proprietary trading on an exchange of which a broker-dealer is not a member. The estimate of 125 firms is based on publicly available data reviewed by staff during March of 2015. *See infra* note 148.

[78] This estimate is based on data from OATS. *See supra* note 21.

[79] This information is based on data from OATS. In 2013, these Non-Member Firms represented a volume-weighted average of approximately 40% of orders sent directly to ATSs. *Id.*

[80] For example, based on disclosures on Form BD as of March 2015, there were 13 Non-Member Firms that are members of only CBOE, an options exchange, that do not disclose as part of their business activities on Form BD being a ''put and call broker or dealer or option writer.'' Similarly, five Non-Member Firms disclose on Form BD that they are a ''broker or dealer making inter-dealer markets in corporate securities over-the-counter'' and are not members of FINRA.

resources nor the necessary expertise to oversee such off-exchange activity.[81] The Commission is concerned that the reliance on the Rule 15b9–1 exemption by cross-market proprietary trading firms, given that exchanges focus their regulatory oversight on their respective exchanges, undermines the effectiveness of the regulatory structure of the off-exchange market and the equities markets more broadly.

As noted, FINRA currently is the SRO to which off-exchange trades are reported.[82] However, because it does not have jurisdiction over Non-Member Firms, it is unable to enforce compliance with the federal securities laws and rules, or apply its own rules, to broker-dealers that conduct a significant amount of off-exchange trading activity, including those that engage in so-called high-frequency trading strategies. As a result, FINRA's ability to perform comprehensive market surveillance, especially for violations of Commission rules, as well as its ability to understand and reconstruct activity in the off-exchange market generally, is limited because Non-Member Firms are not consistently identified in trade reports to the TRFs [83] or the ADF, and their order activity is not captured by OATS.[84] Accordingly, FINRA is unable to monitor the off-exchange market activity of Non-Member Firms, and detect potentially manipulative or other illegal behavior, as efficiently or effectively as it can with FINRA members.[85] Obtaining additional data, such as through the Consolidated Audit Trail (''CAT''),[86] or the assumption of post-trade surveillance and investigation by the Non-Member Firm's member exchange, would neither confer jurisdiction nor provide needed oversight tools to FINRA over Non-Member Firms that participate in the off-exchange market. No exchange currently is positioned to regulate its members' conduct in the off-exchange market, as the exchanges generally have access only to order and trade data for transactions effected on their markets.[87] Moreover, even if exchanges were able to access the necessary trading data (a possibility that would increase with the deployment of CAT),[88] the Commission believes that piecemeal regulation of the off-exchange market by multiple SROs based on the membership status of the participants and a web of regulatory allocations among SROs, through the use of multiple 17d–2 agreements, is significantly less efficient and frustrates the structure established by Congress that an Association regulate the off-exchange market.[89] In addition, an Association's regulatory responsibility for the off-exchange market includes an obligation to monitor those markets for operational and regulatory issues, as well as issues relating to market disruptions.[90] The Commission is concerned that the inability of an Association to reliably identify and enforce regulatory compliance by cross-market proprietary trading firms that are Non-Member Firms in the off-exchange market, creates a risk to the fair and orderly operations of the market.

Further, because FINRA is unable to apply the rules it has developed for the off-exchange market to Non-Member Firms, its ability to create a consistent regulatory framework for the off-exchange market is undermined. FINRA has sought to establish a robust regulatory regime for broker-dealers, including broker-dealers conducting business in the off-exchange market, and has developed a detailed set of rules in core areas such as trading practices,[91] business conduct,[92] financial condition

[81] The Commission notes that, while today an exchange may not be able to effectively regulate off-exchange activity, it may be able to acquire the resources and expertise to do so.

[82] *See supra* note 70.

[83] Reports to the TRFs can only be made by FINRA members. *See* FINRA Rules 7210A(k) and 7210B(i) (defining the term ''Trade Reporting Participant'' or ''Participant'' as ''any member of FINRA in good standing that uses the System'').

[84] When a Non-Member Firm routes an order to a FINRA member which then routes the order to an exchange or off-exchange for execution, OATS data would indicate only that the FINRA member received an order from a Non-Member Firm. The identity of the Non-Member Firm is often not captured because such Non-Member Firms are not required to use a unique Market Participant Identifier (''MPID'') or other identifier when routing orders to a FINRA member. In some cases, FINRA is able to identify the Non-Member Firm that participated in a transaction if, for example, it has an MPID and provides it to the firm to which it routed an order and that firm reports it to FINRA. FINRA has solicited comment from its members on a proposed FINRA rule change that would require FINRA members to identify Non-Member Firms in off-exchange transactions reported to OATS. *See* FINRA Regulatory Notice 14–51, Equity Trading Initiatives: OATS and ATS Reporting Requirements (November 2014), *available at https://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p601681.pdf.* This proposal has not yet been filed with the Commission pursuant to Section 19(b)(1) of the Act. 15 U.S.C. 78s(b)(1).

[85] Non-Member Firms that engage in off-exchange transactions are not required to submit audit trail data to FINRA. *See* FINRA Rules 6610 and 6622(a)(i). The Commission believes that this lack of audit trail reporting is problematic because an Association has statutory responsibility for regulatory oversight of the off-exchange market. Although the Commission understands some off-exchange trades between Non-Member Firms are voluntarily reported by clearing firms, clearing firms are not obligated to report such transactions. Lack of comprehensive reporting of off-exchange transactions to FINRA, among other things, undermines FINRA's ability to effectively surveil the off-exchange market. By extension, this also undermines the ability of the Commission and investors to fully benefit from the self-regulatory model envisioned by Congress in the Exchange Act.

[86] Rule 613 under the Act requires SROs to jointly submit to the Commission a national market system plan (''NMS Plan'') to create, implement, and maintain a consolidated order tracking system, or consolidated audit trail, with respect to NMS securities, that would capture customer and order event information for NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution. *See* Exchange Act Release No. 67457 (July 19, 2012), 77 FR 45721 (August 1, 2012) (''CAT Release''); 17 CFR 242.613.

[87] While some exchanges have rules requiring the reporting of certain off-exchange transactions by their members, these rules, as they currently exist, would not provide the exchanges with the complete view of the market that the Commission believes is necessary to effectively regulate the off-exchange market. For example, NYSE MKT LLC (''NYSE MKT'') Rule 410B—Equities (Reports of Listed Securities Transactions Effected Off the Exchange) only requires reporting of off-exchange transactions in securities listed on NYSE MKT that are not reported to the Consolidated Tape. See Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (order approving, among other things, NYSE MKT Rule 410B); *see also, e.g.,* CBOE Rule 6.49 (Transactions Off the Exchange) (requiring that CBOE members executing transactions in options listed on the exchange other than on CBOE merely keep a record of such transaction for a period of one year).

[88] The Commission notes that the CAT NMS plan would not be implemented for several years. In accordance with Rule 613, the SROs would be required to report the required data to the central repository within one year after effectiveness of the NMS plan; broker-dealers, other than small broker-dealers, would be required to report the required data to the central repository within two years after effectiveness of the NMS plan; and small broker-dealers would be required to report the required data within three years after effectiveness of the NMS plan. 17 CFR 242.613.

[89] *See supra* notes 28–33 and accompanying text.

[90] 15 U.S.C. 78*o*–3.

[91] *See* FINRA Rule 5000 Series—Securities Offerings and Trading Standards and Practices. For instance, FINRA has rules prohibiting members from coordinating prices and intimidating other members. *See* FINRA Rule 5240(a), providing, among other things, that ''[n]o member or person associated with a member shall: (1) Coordinate the prices (including quotations), trades or trade reports of such member with any other member or person associated with a member, or any other person; (2) direct or request another member to alter a price (including a quotation); or (3) engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member, a person associated with a member, or any other person.'' The Commission notes that CBOE has stated that it views any collusion, intimidation and harassment by a CBOE member as ''inconsistent with the just and equitable principles of trade.'' *See* CBOE Regulatory Circular RG97–167 (February 7, 2000) and CBOE Rule 4.1. *See also supra* note 73 and accompanying text.

[92] *See* FINRA Rule 2000 Series—Duties and Conflicts.

and operations,[93] and supervision.[94] Because Non-Member Firms are not subject to these or other FINRA rules, they may be subject to a less robust regulatory framework than FINRA members that themselves trade off-exchange. Non-Member Firms also are not subject to the costs associated with FINRA membership.[95]

As is discussed in more detail in the Economic Analysis, firms that become FINRA members would become subject to the fees charged by FINRA to all of its member firms. FINRA charges each member firm certain regulatory fees designed to recover the costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.[96] FINRA's regulatory fees include a Trading Activity Fee (''TAF'').[97]

The number of trades subject to the TAF in the off-exchange market—and thus the aggregate fees collected by FINRA for that market segment—would not be expected to materially change if the proposed amendments are adopted because, in general, the TAF currently is assessed on the ATSs where Non-Member Firms effect off-exchange transactions, rather than on the Non-Member Firms. However, it is likely that certain on-exchange trades by Non-Member Firms that currently are not covered by the TAF would be captured.[98] As such, the Commission preliminarily believes that FINRA may need to consider reevaluating its fee structure to ensure that it appropriately reflects the activities of, and regulatory responsibilities towards, these FINRA members, if the proposal is adopted.

In addition, under the proposal a broker-dealer that effects transactions on multiple exchanges, and not on ATSs or elsewhere in the off-exchange market, would need to become a member of an Association if it effects transactions indirectly on exchanges of which it is not a member (*i.e.,* through another broker-dealer that is a member of that exchange) in accordance with Section 15(b)(8), unless one of the specified exceptions in the proposed amendment is available.[99] The Commission believes that this is consistent with the statutory framework and would address an activity potentially not subject to effective regulatory oversight in today's market. Specifically, if such a broker-dealer were a member of one exchange but conducted a significant amount of activity indirectly on other exchanges of which it was not a member, the exchange of which it was a member would not be well-positioned to regulate the member's activity on those other exchanges. As with the off-exchange market, individual exchanges today lack access to data,[100] the proper rule set and the necessary expertise to regulate trading on other exchanges. Under these circumstances—where the broker-dealer would not be conducting ''off-exchange'' activity but would be effecting transactions on an exchange of which it is not a member, the Commission believes that an Association is best-positioned to oversee this activity.[101] As discussed elsewhere in this release, FINRA currently

[93] *See* FINRA Rule 4000 Series—Financial and Operational Rules. *See e.g.,* FINRA Rule 4370(a) providing, among other things, that ''[e]ach member must create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable the member to meet its existing obligations to customers. In addition, such procedures must address the member's existing relationships with other broker-dealers and counter-parties.'' Although NYSE MKT LLC Equities Rule 4370 is similar to FINRA Rule 4370(a), for example, a number of other exchanges do not have such a rule.

[94] *See* FINRA Rule 3000 Series—Supervision and Responsibilities Relating to Associated Persons. This rule series generally requires FINRA member firms to, among other things, establish, maintain, and enforce written procedures to supervise the types of business in which the firm engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. *See e.g.,* FINRA Rules 3110 (Supervision), 3120 (Supervisory Control System), and 3170 (Tape Recording of Registered Persons by Certain Firms). *See also* FINRA By-Laws Article III—Qualifications of Members and Associated Persons. Any person associated with a member firm who is engaged in the securities business of the firm—including partners, officers, directors, branch managers, department supervisors, and salespersons—must register with FINRA. Other SROs do not have similar standards for associated persons of member broker-dealers.

[95] The Commission notes that FINRA may need to consider reassessing the structure of its fees, including its Trading Activity Fee, in order to assure that it is fairly and equitably applied to many of the Non-Member Firms that, as a result of the amendments to Rule 15b9–1, may join FINRA. FINRA uses the TAF to recover the costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. *See* FINRA Schedule A to the By-Laws of the Corporation, Section 1(a), *available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4694* (''FINRA Schedule A''). The TAF is generally assessed on FINRA member firms for all equity sales transactions that are not performed in a broker-dealer's capacity as a registered exchange specialist or market maker. *See id.* at Section 1(b). As discussed above, many of the broker-dealers that may be required to join FINRA if the proposed amendments are adopted effect transactions in large volumes throughout the national market system, and often in a capacity other than as a registered market-maker. Accordingly, the Commission notes that FINRA may need to consider reevaluating the structure of the TAF to assure that it appropriately takes into account this business model. *See also infra* notes 174–175 and accompanying text for further discussion of the TAF.

[96] FINRA Schedule A, *supra* note 95, at Section 1.

[97] FINRA assesses each member a TAF on the sale of all covered securities. For the purposes of determining the TAF, covered securities include, among other things, all exchange-registered securities wherever executed and all other equity securities traded otherwise than on an exchange. FINRA last adjusted the TAF rate for sales of covered equity securities effective July 2012. FINRA's regulatory fees also include a Gross Income Assessment (''GIA'') and a Personnel Assessment.

In addition, Section 3 of Schedule A to the FINRA By-Laws states that each member will be assessed a regulatory transaction fee that is determined periodically in accordance with Section 31 of the Exchange Act. Section 31(c) generally requires each national securities association to pay the Commission a fee based on the aggregate dollar amount of sales of certain securities transacted by or through any member of such association otherwise than on a national securities exchange. 15 U.S.C. 78ee(c). The Commission preliminarily believes that FINRA's Section 3 fees will not change as a result of the proposed amendments to Rule 15b9–1. The fees collected by FINRA under Section 3 are intended to correspond to its obligations to the SEC under Section 31(c) of the Act. However, if the proposal is adopted, as Non-Member Firms become FINRA members, FINRA could seek to reallocate Section 3 fees among FINRA members. Nonetheless, because the Commission generally believes that Section 3 fees are passed through by FINRA members to the parties to covered transactions, we do not expect the burden of Section 3 fees to materially change.

[98] As is discussed in more detail in the Economic Analysis, the Commission preliminarily estimates that some firms could be subject to a TAF of up to $3.2 million based on their current sales of covered securities. *See* Section V.C.2.

[99] The Commission is not currently aware of any broker-dealer with such a business model.

[100] *See supra* note 76.

[101] The Commission also believes that this would be consistent with the statutory framework, which subjected broker-dealers that effect transactions on an exchange of which they are not a member first to Commission, and then to Association, oversight. In amending Rule 15b8–1 in 1976 to add the exclusion for proprietary trading, the Commission also revised the text of Rule 15b8–1 by substituting the phrase ''otherwise than on a national securities exchange of which he is a member'' to replace the phrase ''otherwise than on a national securities exchange.'' *See* Adoption of Amendments to SECO Rules, *supra* note 13, at 10600. The Commission made this revision ''to conform the scope of the SECO rules to the Commission's authority'' under Section 15(b)(8) and 15(b)(9) (as revised in 1975) to subject ''broker-dealers who effect transactions on exchanges other than those of which they are members to the SECO rules.'' *Id.* This change reflected the Commission's understanding that broker-dealers effecting transactions on exchanges of which they were not a member should be subject to the then-existing regulatory framework (*i.e.,* either Association membership or direct Commission regulation under the SECO program) governing off-exchange trading. As noted above, Congress amended the Act in 1983 ''to eliminate direct regulation of broker-dealers by the Commission through the SECO Program and to require any broker-dealer engaged in an over-the-counter ('OTC') securities business to join a registered securities association.'' *See* SECO Programs Release, *supra* note 9, at 53688. Consistent with the Commission's rationale in 1976, the Commission believes that broker-dealers that effect transactions on exchanges of which they are not a member should be subject to the current regulatory framework governing off-exchange trading, namely, membership in an Association.

conducts cross-market surveillance and is provided exchange audit trail data pursuant to existing RSAs and 17d–2 agreements.[102] In contrast, exchanges generally do not conduct cross-market surveillance and most have allocated this responsibility to FINRA. Accordingly, the Commission believes that, as a practical matter and consistent with Section 15(b)(8), FINRA is currently in the best position to regulate cross-market activity [103] by broker-dealers that effect transactions on exchanges other than those of which the broker-dealer is a member, even if they do not effect transactions in the off-exchange market.[104]

In sum, the Commission is concerned that some of the most active cross-market proprietary trading firms may not be subject to effective regulatory oversight by an exchange or Association with respect to the full range of their market activity. Accordingly, the Commission is proposing to amend Rule 15b9–1, as described below, to appropriately tailor the exemption from Association membership for today's markets.

[102] *See, e.g.,* News Release, FINRA, BATS Global Markets, FINRA Enter Regulatory Service Agreement (February, 6, 2014), *available at https://www.finra.org/Newsroom/NewsReleases/2014/P443474.* Such agreements provide detailed data that allow FINRA to comprehensively identify the market-wide activity of broker-dealers, and to surveil behavior for violative activity that might otherwise go undetected if surveillance were only being conducted on an exchange-specific basis.

[103] In advance of the 1975 Amendments, Congress contemplated reforms to the regulatory structure of the securities markets in which an Association's role would be expanded, while exchanges would focus their regulatory activities on their respective markets: ''. . . the time has come to begin planning a framework which will guide the development of the self-regulatory system in the future. In the revised system, a single nationwide entity [an Association] would be responsible for regulation of the retail end of the securities business, including such matters as financial responsibility and selling practices, while each exchange would concentrate on regulating the use of its own trading facilities . . . the regulatory activities of the NASD (the only organization presently registered as a national securities association) would encompass many of the present regulatory activities of the NYSE and other exchanges over retail activities of their members. This 'expanded' NASD would have direct responsibility, subject to SEC oversight, for enforcing SEC rules and its own rules . . .'' S. Doc. No. 93–13 at 16, 169 (1973).

[104] A broker-dealer would not need to become a member of an Association if it conducts no activity in the off-exchange market and it becomes a member of each exchange upon which it effects transactions. Although the Commission is not aware of such broker-dealer business model existing today, if one were to arise, the Commission notes that the exchanges upon which such broker-dealer directly effects transactions could enter into an RSA to ensure effective cross-market supervision of this activity. The Commission acknowledges that in the future another SRO could assume these responsibilities pursuant to 17d–2 Agreements, subject to Commission approval, and RSAs.

II. Discussion of Amendments to Rule 15b9–1

A. Prior Comments on Association Membership

In 2010, the Commission issued a Concept Release that, among other things, solicited comment on whether all proprietary trading firms should be required to register as broker-dealers and become members of FINRA to help assure that their operations were subject to full regulatory oversight.[105] The Commission received six comment letters that directly addressed the question as it relates to FINRA membership, including one comment letter from FINRA.[106] The six comment letters offered contrasting views. Three commenters expressed their support for enhanced oversight of proprietary trading firms, including a requirement to become members of FINRA, generally asserting that because proprietary trading firms are not all members of FINRA there is a lack of uniform regulation among registered broker-dealers.[107] Three commenters expressed opposition to the idea of requiring proprietary trading firms to become FINRA members, asserting their belief that such firms are already subject to full regulatory oversight,[108] requiring such firms to join FINRA would be costly and burdensome,[109] and that, because proprietary trading firms do not have customers, there would be no benefit to requiring such firms to become members of FINRA.[110] The Commission has considered these comments, and, for the reasons set forth throughout this release, is proposing to amend Rule 15b9–1 as described herein.

[105] *See* Concept Release, *supra* note 16, at 3612.

[106] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Kimberly Unger, Executive Director, Security Traders Association of New York, Inc., dated April 30, 2010 (''STANY Letter''); from Liam Connell, Chief Executive Officer, Allston Trading, LLC, and Richard B. Gorelick, Chief Executive Officer, RGM Advisors, LLC, and Adam Nunes, President, HRT Financial LLC, Hudson River Trading, LLC, and Cameron Smith, General Counsel, Quantlab Financial, LLC, dated April 23, 2010 (''Allston Letter''); from Donald R. Wilson, Jr., DRW Trading Group, dated April 21, 2010 (''DRW Letter''); from Marcia E. Asquith, Senior Vice President and Corporate Secretary, Financial Industry Regulatory Authority, dated April 23, 2010 (''FINRA Letter''); letter to the Commission from Berkowitz, Trager & Trager, LLC, dated April 21, 2010 (''Berkowitz Letter''); and from Stephen M. Barnes, J.D., Salt Lake City, Utah, received October 3, 2011 (''Barnes Letter'').

[107] *See* FINRA Letter, *supra* note 106, at 4–5; Barnes Letter, *supra* note 106, at 32–33 (suggesting that, to level the regulatory playing field, high-frequency trading firms should be required to register as broker-dealers with the Commission and become members of an SRO such as FINRA or an exchange); and STANY Letter, *supra* note 106, at 14 (suggesting that the Commission review and consider registration requirements of market participants that are not required to be registered with FINRA and noting that enhanced surveillance and enforcement should improve investor confidence in the markets). *See also* letter to the Honorable Mary Schapiro, Chairman, Commission, from Kimberly Unger, Executive Director, Security Traders Association of New York, Inc., dated May 10, 2010, at 14 (urging the Commission to work towards a more harmonized regulatory structure, which the commenter believes will put FINRA in a better position to address regulatory gaps through a holistic, cross-market approach to regulation that can detect problematic activity across multiple markets and products).

[108] *See* Allston Letter, *supra* note 106, at 14–15 (stating that it is inaccurate to say that proprietary trading Non-Member Firms are not subject to full regulatory oversight and noting that such firms are generally members of several exchanges and are consequently subject to multiple regulators).

[109] *See* Berkowitz Letter, *supra* note 106, at 1 (stating that requiring proprietary trading firms to register as broker-dealers and become members of FINRA would add significant costs and burdens to those firms).

[110] *See* DRW Letter, *supra* note 106, at 4 (stating that FINRA's focus is on investor protection and not proprietary trading, and, therefore, there would be no benefit to requiring proprietary trading firms that do not undertake a customer business to become members of FINRA).

B. Overview of Amendments

As noted above, Section 15(b)(8) [111] of the Act [112] generally prohibits any registered broker or dealer from effecting transactions in securities unless it (1) is a member of an Association or (2) effects transactions in securities solely on an exchange of which it is a member. Section 15(b)(9) [113] of the Act provides the Commission authority to exempt any broker or dealer from the requirements of Section 15(b)(8). The Commission has, by rule, exercised its exemptive authority. Specifically, Rule 15b9–1 [114] generally exempts any broker or dealer from membership in an Association if it: (1) is a member of a national securities exchange; (2) carries no customer accounts; and (3) has annual gross income of no more than $1,000 that is derived from purchases or sales of securities effected otherwise than on an exchange of which it is a member. However, income derived from transactions for the dealer's own account with or through another registered broker or dealer,[115] or through the ITS, is excluded from such *de minimis* allowance.

The Commission is proposing to eliminate the existing *de minimis* allowance (including the exclusion for proprietary trading) and replace it with a more targeted exemption from Association membership for a broker-dealer that conducts business on a

[111] *See supra* note 46.

[112] 15 U.S.C. 78a *et seq.*

[113] *See supra* note 7.

[114] *See supra* notes 50–51.

[115] *See supra* note 51.

national securities exchange, to the extent it effects transactions off-exchange for the dealer's own account with or through another registered broker-dealer, that are solely for the purpose of hedging the risks of its floor-based activities, by reducing or otherwise mitigating the risks thereof. The proposed amendments also include an exemption for a broker-dealer to the extent it executes orders that are routed by a national securities exchange of which it is a member, to prevent trade-throughs on such national securities exchange consistent with the provisions of Rule 611 of Regulation NMS.

C. Elimination of the De Minimis Allowance

The Commission proposes to eliminate the *de minimis* allowance in its entirety. Specifically, the Commission is proposing to delete the following language from Rule 15b9–1(a): ''and (3) has annual gross income derived from purchases and sales of securities otherwise on a national securities exchange of which it is a member in an amount no greater than $1000.'' The Commission also is proposing to delete paragraphs (b) and (c) of the Rule, as they set forth two exceptions to the *de minimis* allowance.[116] Paragraph (b) provides that income derived from (1) transactions for the dealer's own account with or through another registered broker-dealer, and (2) transactions through the ITS, do not count toward the $1,000 *de minimis* allowance, and paragraph (c) defines the ITS.

As discussed above, the $1,000 *de minimis* allowance originally was intended to permit exchange specialists and other floor members to receive a nominal amount of commissions on occasional off-exchange transactions for accounts referred to other members, without subjecting them to SECO rules and broker-dealer registration and, later, Association membership.[117] Since the *de minimis* allowance was first adopted in 1965, the securities markets have undergone a significant transformation. At that time, virtually all trading activity was conducted manually on the floors of national securities exchanges.[118] Today, however, electronic cross-market order routing and trading strategies are a significant component of the markets, and exchange floor-based businesses represent only a small fraction of market activity. The $1,000 *de minimis* allowance has never been adjusted, and the Commission is unaware of any floor members today that refer accounts to other broker-dealers in exchange for a share of the broker's commission revenues. Although the Commission is proposing to eliminate the *de minimis* allowance, it is soliciting comment on whether the *de minimis* allowance might continue to be appropriate in today's markets. In particular, the Commission seeks responses to the following questions:

1. Do exchange floor members currently rely on the $1,000 *de minimis* allowance? If so, how? Please describe the number and types of floor members that rely on the allowance. Please provide the nature and extent of reliance on the allowance. Also, please provide any available data on the amount and frequency of commissions or referral fees that floor members may continue to receive with respect to off-exchange transactions.

2. If the *de minimis* allowance is being used by exchange floor members, is it being relied upon for its original purposes (*i.e.,* accommodating occasional commission splitting or referrals by such members)? If not, for what purposes are floor members today relying on the *de minimis* allowance?

3. If exchange floor members currently rely on the *de minimis* allowance and the Commission retains that allowance, should the $1,000 limit be changed? Why or why not? What should the limit be?

4. If the *de minimis* allowance were eliminated, as proposed, would some exchange floor members be required to become members of an Association? If so, how many? Please provide the basis of any estimate. What would be the effect on those firms?

5. Do other broker-dealers that are not floor members rely on the *de minimis* allowance? If so, for what activities? Specifically, do cross-market proprietary trading firms, as discussed above, rely on the allowance? If so, why? Are there other types of businesses that use the allowance? If so, please describe them. How and why do they rely on the allowance?

6. If the *de minimis* allowance were eliminated, what would be the effect on these non-floor-based broker-dealer firms? For example, if the allowance were eliminated, would there be effects on the business of firms that would be required to register with an Association, and if so what would they be? Would business incentives change such that firms might adjust their business model or their trading volume by leaving the off-exchange market, moving transactions on-exchange, or leaving the markets altogether? Would the effects be different on broker-dealers trading equities from those trading options?

D. Floor Member Hedging Exemption

Although the Commission proposes to eliminate the *de minimis* allowance in its entirety, it also proposes to replace the allowance with an exemption from Association membership for exchange member broker-dealers that operate on the floor of the exchange, to the extent they effect transactions off-exchange solely for the purpose of hedging the risks of their floor-based activities. The Commission proposes the hedging exemption be limited to firms that trade on the floor of a national securities exchange, as the Commission understands that currently, broker-dealers that trade exclusively on a single exchange do so on a physical exchange floor.[119] Accordingly, the Commission is proposing to add the following language to Rule 15b9–1: ''and, (c) Effects transactions solely on a national securities exchange of which it is a member, except that . . . (1) A dealer that conducts business on the floor of a national securities exchange may effect transactions, for the dealer's own account with or through another registered broker or dealer, that are solely for the purpose of hedging the risks of its floor-based activities, by reducing or otherwise mitigating the risks thereof. A dealer seeking to rely on this exception shall establish, maintain and enforce written policies and procedures reasonably designed to ensure and demonstrate that such hedging transactions reduce or otherwise mitigate the risks of the financial exposure the dealer incurs as a result of its floor-based activity. Such dealer shall preserve a copy of its policies and procedures in a manner consistent with 17 CFR 240.17a–4 until three years after the date the policies and procedures are replaced with updated policies and procedures.''

The Commission understands that today there are some broker-dealers that continue to limit their activities to exchange floors, particularly in the options markets.[120] As discussed above,

[116] *See supra* notes 50–51.

[117] *See supra* note 39 and accompanying text.

[118] *See, e.g.,* Special Study, supra note 14, at 98 (''Trading by NYSE members on the Exchange but from off the floor accounts for approximately 5 percent of total Exchange purchases and sales . . .'').

[119] Currently, NYSE Arca Options, NYSE Amex Options, NASDAQ OMX Phlx, CBOE, NYSE, and NYSE MKT have physical exchange floors.

[120] Based on disclosures on Form BD, as of February 2015, the Commission understands that there are approximately 43 Non-Member Firms that are members of one national securities exchange and that disclose being engaged in floor activities on Form BD. The business model of these firms varies widely, and may include market making, other proprietary trading and agency business.

at the time Rule 15b9–1 was adopted, the circumstances under which an exchange specialist or floor broker would trade proprietarily off-exchange were quite limited, such as where a regional exchange specialist would hedge risk on the primary listing market. The Commission believes that those broker-dealers that today continue to limit their trading activities to an exchange floor may seek to hedge the risks of their floor-based activities on other markets, both on national securities exchanges and off-exchange.[121] Therefore, the Commission proposes to retain a more focused exemption from Association membership for the type of activity for which the Commission believes the exclusion for proprietary trading in Rule 15b9–1 was originally designed.[122]

The availability of the proposed hedging exemption would be limited to dealers that conduct business on the floor of a national securities exchange and are members of that exchange. Section 15(b)(8) requires Association membership for all registered broker-dealers other than those that effect transactions solely on an exchange of which they are a member. Broker-dealers that limit their activities in this manner generally are specialists or floor brokers based on the floor of an individual exchange. In exercising its exemptive authority when it adopted Rule 15b8–1 in 1965, the Commission sought to accommodate off-exchange activities ancillary to that floor-based business. The Commission believes that, today, few broker-dealers limit their activities to a particular exchange. Those broker-dealers that do limit their business to an exchange floor, however, may continue to seek to hedge the risk of their floor-based activities by effecting transactions on another exchange or in the off-exchange market.

The Commission preliminarily believes that a floor-based dealer seeking to rely on the proposed hedging exemption in Rule 15b9–1 should be required to establish, maintain and enforce written policies and procedures reasonably designed to ensure and demonstrate that its off-exchange transactions are solely for the purpose of hedging the risks of its floor-based activities, by reducing or otherwise mitigating the risks thereof. Such hedging should reduce or otherwise mitigate the risks of the financial exposure the dealer incurs as a result of its business on the floor of an exchange of which it is a member. Because such hedging transactions must be solely for the purpose of hedging the risks of the dealer's floor-based activities, the transactions, of course, should not be for the purpose of increasing the aggregate risk of the dealer. The Commission notes that whether a transaction or transactions entered into to reduce or otherwise mitigate risk results in a profit or loss is not dispositive of whether or not such a transaction or transactions meets the terms of the proposed floor member hedging exemption. A floor-based dealer seeking to rely on the proposed hedging exemption would be required to preserve a copy of its policies and procedures in a manner consistent with Rule 17a–4 until three years after the date the policies and procedures are replaced with updated policies and procedures.[123]

The Commission preliminarily believes that requiring written policies and procedures, as described above, would facilitate SRO supervision of broker-dealers relying on the proposed hedging exemption, as it would provide an efficient and effective way for regulators to assess compliance with the proposed exemption. The determination of whether an off-exchange transaction by a floor-based dealer reduces or otherwise mitigates the risk of the financial exposure incurred as a result of the dealer's floor-based business may vary depending on the nature of the business of the floor-based dealer, its financial position, and the particular transactions effected. Consequently, the Commission preliminarily believes that requiring floor-based dealers to develop written policies and procedures will provide sufficient flexibility to accommodate the varying business models of floor-based dealers and appropriate hedging activities.

The Commission notes, however, that such written policies and procedures must be reasonably designed to ensure and demonstrate that the floor-based dealer's off-exchange hedging transactions reduce or otherwise mitigate the risks of the financial exposure it incurs as a result of its floor-based activity. Accordingly, a dealer seeking to rely upon the proposed hedging exemption should maintain documentation that, in the context of an SRO or Commission examination, would enable it to show how the hedging transactions it effects off the exchange reduce or otherwise mitigate the risks of its floor-based business.

The Commission notes that the exchange of which the dealer is a floor member would be responsible for enforcing compliance with the hedging exemption, including reviewing the adequacy of the dealer's written policies and procedures and whether the dealer's off-exchange transactions comply with those written policies and procedures, including the requirement that the hedging transactions reduce or otherwise mitigate the risks of financial exposure the dealer incurs as a result of its floor-based activity and that the policies and procedures are reasonably designed to so demonstrate.[124]

Because the proposed hedging exemption is intended to allow a dealer to reduce or otherwise mitigate risk incurred in connection with its floor-based activities, it would be limited to transactions for the dealer's own account. In addition, because the floor-based dealer would not itself be a member of the national securities exchange on which transactions may be effected, or an Association, such transactions would need to be conducted with or through another registered broker-dealer that is a member of such other national securities exchange or a member of an Association (or both).

Finally, a dealer seeking to rely on the proposed hedging exemption would be required to preserve a copy of its policies and procedures in a manner consistent with Rule 17a–4 under the Exchange Act until three years after the date the policies and procedures are replaced with updated policies and procedures. Accordingly, a dealer must keep the policies and procedures relating to its use of the hedging exemption as part of its books and records while they are in effect, and for three years after they are updated.

The Commission requests comment on all aspects of the proposed hedging exemption in Rule 15b9–1. In particular, the Commission seeks responses to the following questions:

7. To what extent do exchange floor members that are Non-Member Firms today effect transactions in the off-exchange market to hedge the risk of their floor-based activities? What is the nature and extent of such off-exchange market activities? Do these activities

[121] For example, a broker-dealer may operate a floor-based business on one or more options exchanges. As a result of this activity, the broker-dealer may need to mitigate the risk of its options positions, resulting from such activity, on other options markets or in the equities markets. The proposed floor member hedging exemption would allow the broker-dealer to enter into transactions on other markets solely for the purpose of hedging this risk.

[122] *See supra* note 39 and accompanying text.

[123] 17 CFR 240.17a–4.

[124] *See* 15 U.S.C. 78f(b)(1) which requires that an exchange is so organized and has the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange.

tend to focus on particular products? The Commission specifically seeks data from exchange floor members that demonstrates the extent to which they trade off the exchange floor and how such off-exchange trading relates to their floor-based business, including to hedge the risks thereof, as such data may be particularly helpful in assessing a potential floor member hedging exemption when the Commission considers adoption of the proposed amendments.

8. Is the Commission's proposed description of hedging transactions appropriate? Is it sufficiently defined? If not, how should it be modified or supplemented? Is the phrase ''solely for the purpose of hedging the risks of its floor-based activities,'' as used in the proposed amendments, sufficiently precise that broker-dealers will know what activities are allowed under the proposed floor member hedging exemption from Association membership? If not, what should be changed or what guidance should be provided?

9. Will broker-dealers seeking to rely on the floor member hedging exemption be able to evaluate whether, and demonstrate that, off-exchange transactions are ''solely for the purpose of hedging the risks of floor-based activities''? Please provide specific examples. What would be the associated costs?

10. Should there be a hedging exemption at all? Why or why not?

11. Should the Commission narrow or broaden the proposed floor member hedging exemption in any way? If so, how and why?

12. Do exchange floor members that are Non-Member Firms effect transactions in the off-exchange market, or on exchanges of which they are not a member, for purposes other than hedging the risk of their floor-based activities? If so, please describe the nature and extent of such activities. Should there be an exemption for these activities? Why or why not?

13. Are there non-floor-based exchange members that today focus their business activities on a single exchange? If so, what is the nature of their business activity? Should there be an exemption for such activities? Why or why not?

14. The proposed floor member hedging exemption is limited to transactions effected with or through another registered broker-dealer. Are there circumstances where an exchange floor member that is a Non-Member Firm, might need to hedge the risk of its floor-based activities through a transaction with a non-registered broker-dealer counterparty? If so, please describe the nature and extent of such transactions and the particular reason(s) that such transactions should be covered.

15. The proposed floor member hedging exemption is limited to transactions for the dealer's own account. Are there circumstances where an exchange floor member that is a Non-Member Firm might need to hedge the risk of customer activity on the exchange, as agent, in the off-exchange market or on exchanges of which it is not a member? If so, please describe.

16. Is the proposed policies and procedures requirement appropriate for the floor member hedging exemption? What would be the costs of establishing, maintaining and enforcing the policies and procedures, and the related record-keeping requirements? How are such costs determined? Please provide evidence of the nature, timing, and extent of such costs. Would such costs deter dealers from relying on the floor member hedging exemption? Are there more efficient and effective alternatives to a policies and procedures approach? If so, what are they? Have the transactions executed by floor members pursuant to the current Rule's exclusion for proprietary trading posed issues of regulatory compliance, market surveillance, or enforcement? If so, please describe in detail.

17. Will the proposed requirement to establish, maintain, and enforce written policies and procedures enable floor members to efficiently hedge their floor-based activities while effectively ensuring the floor member hedging exemption is used as intended? Is there another approach that would better achieve these goals?

18. Would the proposed floor member hedging exemption present compliance risks or otherwise raise concerns regarding the protection of investors or the maintenance of fair, orderly, and efficient markets? If so, please describe.

19. Would current exchange surveillance and enforcement mechanisms be effective to monitor trades that would be executed pursuant to the proposed floor member hedging exemption? Please explain.

a. If not, should the Commission require additional reporting by registered broker-dealers acting as agent for dealers relying on the floor member hedging exemption? For example, should they report to an exchange or an Association (i) the identity of the floor member effecting the hedging transaction; and (ii) the fact that the transaction was a hedging transaction? Is such a requirement necessary to assure the adequacy of market surveillance and compliance? Or, alternatively, is the registered broker-dealer acting as agent on behalf of the dealer subject to sufficient rules and regulations (including Rule 15c3–5 under the Exchange Act,[125] known as the Commission's ''Market Access Rule'')? Please explain.

b. Could a Non-Member Firm execute a hedging transaction directly with another Non-Member Firm? If so, how would the transaction be subject to surveillance? How would this activity affect the enforcement of the exemption? Please explain.

c. Would exchanges otherwise have the ability to assess compliance of broker-dealers relying on the Rule?

20. Should the proposed floor member hedging exemption be subject to any quantitative or qualitative limitations, or to special reporting obligations? Please explain.

21. Should the proposed floor member hedging exemption require the floor member to retain records demonstrating how each off-exchange transaction complies with its policies and procedures? Why or why not? What would be the associated costs, and what is the basis for those costs? Would the cost associated with recordkeeping on a transaction by transaction basis be overly burdensome, or unnecessary given the Commission's proposed policies and procedures requirement?

22. Should the Rule contain an anti-evasion provision to prevent floor members from attempting to circumvent the limitations in the floor member hedging exemption? Is there a better method than the proposed policies and procedures approach to ensure that floor members do not misuse the proposed floor member hedging exemption? If so, what is it? Alternatively, are the existing Commission anti-fraud and anti-manipulation rules sufficient to prevent misuse of the proposed floor member hedging exemption?

23. Should floor members have to make a certification in connection with their reliance on the floor member hedging exemption? Why or why not? If a certification should be required, what would be the key elements thereof? How frequently should the certification be made? Who should make it? What qualifications, if any, to such certification might be appropriate (*e.g.,* reasonable basis to believe, best of my knowledge)? Should the certification be made in conjunction with an internal compliance review? If so, what type of internal compliance review should be conducted?

[125] 17 CFR 240.15c3–5.

24. Are certifications an appropriate way to promote compliance with the hedging exemption? Do certifications bring more accountability, or do they create compliance costs and therefore a barrier to entry?

25. Is data currently available that could be used by regulators to monitor the use of the proposed floor member hedging exemption? Are there other approaches that would do more to enhance regulatory surveillance, protect investors, or ensure fair, orderly, and efficient markets?

26. Are there other mechanisms the Commission could consider to monitor compliance with the floor member hedging exemption? If so, please explain.

E. Regulation NMS Routing Exemption

The Commission proposes to eliminate a portion of subparagraphs (b)(2) and all of subparagraph (c) from Rule 15b9–1, because both contain outdated references to the ''Intermarket Trading System.'' [126] ITS was a national market system plan (''ITS Plan'') operated by the national securities exchanges and NASD that required each participant to provide electronic access to its displayed best bid and offer to other participants and provided an electronic mechanism for routing orders, called commitments to trade, to access those displayed prices.[127] This permitted ITS Plan members at each market to have limited access to the other markets for the purpose of avoiding trade-throughs [128] and locked markets.[129] However, the ITS Plan was eliminated in 2007, when it was superseded by Regulation NMS.[130] Accordingly, the Commission is proposing to eliminate the following language, which creates an additional exception to the *de minimis* allowance, from Rule 15b9–1 (b): ''Or (2) through the Intermarket Trading System.'' In addition, the Commission is eliminating in its entirety subparagraph (c) of the Rule, which defines the ITS as follows: ''(c) For purposes of this section, the term Intermarket Trading System shall mean the intermarket communications linkage operated jointly by certain self-regulatory organizations pursuant to a plan filed with, and approved by, the Commission pursuant to § 242.608 of this chapter.''

Today, Rule 611 of Regulation NMS requires trading centers to establish, maintain and enforce policies and procedures reasonably designed to prevent trade-throughs in exchange-listed stocks, subject to certain exceptions.[131] In general, Rule 611 protects automated quotes that are the best bid or offer of a national securities exchange or Association.[132] To facilitate compliance with Rule 611 of Regulation NMS, national securities exchanges have developed the capability to route orders through broker-dealers (many of which are affiliated with the exchanges) to other trading centers with protected quotations.

As discussed above, the Commission understands that some broker-dealers today continue to limit their activities to exchange floors, and believes that Rule 15b9–1 should continue to accommodate transactions away from the exchange of which they are a member that are necessary to comply with regulatory requirements. A floor-based member may at times seek to effect a transaction on the exchange at a price that would trade-through a protected quotation on another trading center. In such a case, the exchange would need to route the member's order, through a routing broker-dealer, to that other trading center before it could execute any remainder of the floor-based member's order on the exchange. Therefore, a broker-dealer may be required, as a necessary part of its business, to effect transactions otherwise than on the exchange of which it is a member as a consequence of the requirements of Rule 611 of Regulation NMS.

The Commission preliminarily believes that transactions effected solely to comply with Rule 611 regulatory requirements should not require membership in an Association by a broker-dealer that otherwise limits its activities to an exchange of which it is a member. Accordingly, the Commission proposes to add the following language to create a second exemption from the requirement under proposed Rule 15b9–1(c) that a broker-dealer effect transactions solely on an exchange of which it is a member: ''(2) a broker or dealer may effect transactions off the exchange resulting from orders that are routed by a national securities exchange of which it is a member, to prevent trade-throughs on that national securities exchange consistent with 17 CFR 242.611.'' The Commission believes that permitting such routing only by a national securities exchange of which the broker-dealer is a member will provide the exchange with visibility into the routing of transactions by its members to other exchanges, and thus maintain the exchange's ability to effectively oversee the entirety of its member's activity.

The Commission requests comment on all aspects of the proposed Regulation NMS routing exemption in Rule 15b9–1. In particular, the Commission seeks responses to the following questions:

27. Is the proposed routing exemption necessary and appropriate? Why or why not?

28. Is the scope of the proposed routing exemption sufficient to provide for all off-exchange transactions that might be effected by floor members as a necessary consequence of compliance with Rule 611 of Regulation NMS? If not, how should it be changed?

29. Does the proposed routing exemption allow transactions beyond those necessary to comply with Rule 611 of Regulation NMS? If so, is that appropriate and should it be narrowed or broadened?

30. Are there other off-exchange transactions that a floor member might need to effect in order to comply with regulatory requirements? If so, please describe those transactions and the relevant regulatory requirements.

III. Effective Date and Implementation

The Commission recognizes that firms will require time to comply with Rule 15b9–1 if the amendments are adopted in order to become a member of an Association, or modify the firm's business practices to conform to the requirements of the Rule, as amended. As noted previously, FINRA is currently the only Association. To become a FINRA member, a broker-dealer must complete FINRA's New Member Application and participate in a pre-

[126] The full title of the ITS Plan was ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(c)(3)(B) of the Exchange Act of 1934.'' The ITS Plan was initially approved by the Commission in 1978. Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419 (April 24, 1978). All national securities exchanges that traded exchange-listed stocks and the NASD were participants in the ITS Plan.

[127] *Id.*

[128] *See* 17 CFR 242.600(b)(77) defining a ''trade-through'' under Regulation NMS.

[129] A ''locked market'' occurs when a trading center displays an order to buy at a price equal to an order to sell, or an order to sell at a price equal to an order to buy, displayed on another trading center.

[130] Notice of Filing and Immediate Effectiveness of the Twenty Fourth Amendment to the ITS Plan Relating to the Elimination of the ITS Plan, Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007). Today, Regulation NMS contains an updated trade-through rule, and contemplates the use of private linkages by trading centers to route orders to avoid trade-throughs. 17 CFR 242.610–611.

[131] Exchange Act Rule 611 states, in part, that ''a trading center shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks. . . .'' 17 CFR 242.611.

[132] *Id.*

membership interview.[133] The broker-dealer and its associated persons must comply with FINRA's registration and qualification requirements.[134] The amount of time that it takes to become a FINRA member would depend on a number of factors, including the nature of the broker-dealer's business, the level of complexity or uniqueness of the firm's business plan, the number of associated persons the firm employs, and whether the firm has an affiliate that is already a member of FINRA.[135] The Commission understands, based on conversations with FINRA that, on average, the FINRA membership application process generally takes approximately four months.

Alternatively, if the proposed amendments are adopted, a Non-Member Firm not eligible for, or choosing not to rely on, an exemption may become a member of additional exchanges upon which it trades or otherwise modify its business model to conform with the proposed amendments to the Rule. The Non-Member Firm may also need to modify its systems or take other steps to achieve compliance.

The Commission preliminarily believes that 360 days after publication in the **Federal Register** of any final rules that the Commission may adopt should provide firms enough time to comply with the amended Rule. Therefore, the Commission proposes that the compliance date for the proposed amendments to Rule 15b9–1 would be 360 days after publication of the final rule in the **Federal Register**. The Commission solicits comment on the adequacy of this proposed implementation timeline. In particular, the Commission seeks responses to the following questions:

31. Does 360 days after publication in the **Federal Register** provide firms with sufficient time to comply with the revised Rule? Would firms be in a position to comply with the revised Rule earlier than 360 days after publication?

32. How long does the registration process with FINRA, should a firm decide to register, typically take? Please include the estimated time to prepare the application as well as the estimated time for FINRA to process the application.

33. Do commenters believe that a longer or shorter period is appropriate to determine whether becoming a member of an Association is preferable to changing a firm's business model to remain within the exemptions provided by the Rule, as amended (*i.e.,* ceasing all off-exchange activity and becoming a member of each exchange on which the firm trades, or limiting the firm's off-exchange activity to comply with the floor member hedging exemption and/or NMS routing exemption)?

34. How long does it typically take to complete the application process with a national securities exchange? Please include the estimated time to prepare the application as well as the estimated time for an exchange to process it.

35. To the extent a firm intends to rely on one or more of the proposed exemptions, how long would it take such firm to make the required systems changes to comply? Are there other steps that would need to be taken to achieve compliance? If so, what is the estimated time to accomplish those steps?

IV. General Request for Comments

The Commission seeks comment on all aspects of the proposed amendments to Rule 15b9–1. Commenters should, when possible, provide the Commission with data to support their views. Commenters suggesting alternative approaches should provide comprehensive proposals, including any conditions or limitations that they believe should apply, the reasons for their suggested approaches, and their analysis regarding why their suggested approaches would satisfy the objectives of the proposed amendments.

36. The Commission requests comment generally on whether narrowing or broadening the current exemption is appropriate. In particular, the Commission seeks comment on whether the fact that Non-Member Firms currently must use an Association member firm to report off-exchange trades gives an Association sufficient information and jurisdiction to effectively regulate the off-exchange market. Are there off-exchange transactions between two Non-Member Firms that occur that are not reported?

37. The Commission requests comment on whether the current exemption should be eliminated entirely. What would be the benefits or drawbacks of doing so?

38. Other than the proposed hedging exemption and Regulation NMS routing exemption, are there any other exemptions that the Commission should consider?

39. Have transactions effected pursuant to the current Rule posed compliance issues in the past? If so, please describe in detail.

40. In addition, the Commission is interested in data indicating how many entities rely either on Rule 15b9–1 in its current form, or exclusively on the statutory exception in Section 15(b)(8) of the Exchange Act. Reliance on Rule 15b9–1 is currently self-effecting (*i.e.,* does not require the reporting of such reliance to the Commission or any other regulatory authority). In lieu of the proposed amendments, should the Commission require broker-dealers relying on Rule 15b9–1 to report such reliance to the Commission or to the exchange of which the broker-dealer is a member? If so, what form should such reporting take and what information should be provided to the Commission or the exchange of which the broker-dealer is a member? If not, why not and what alternative means could be used to collect data about reliance on Rule 15b9–1?

41. If the Commission were instead to eliminate Rule 15b9–1 altogether, how many broker-dealers would: (i) Restrict their business to only those national securities exchanges of which they are a member; (ii) become members of other national securities exchanges; and/or (iii) become members of an Association? Would implementation of the proposed amendments have an effect on market liquidity? If so, please estimate that effect. Could broker-dealers that currently rely on the Rule respond to its elimination in other ways to avoid Association membership? If so, please explain.

42. Should the Commission allow Non-Member Firms that conduct off-exchange trading activity to remain exempt from membership in an Association? If so, why? Would membership by Non-Member Firms in multiple exchanges prove an efficient and effective substitute for Association membership? Should the level of off-exchange activity affect the ability of a firm to be exempt from Association membership? Why or why not?

43. Should the Commission require the exchanges to engage in joint plans to ensure that the on-exchange cross-market activity of their members is effectively regulated? How might this improve the oversight of on-exchange trading activity? What problems or inefficiencies would relying on joint plans for the regulation of on-exchange trading activity by exchanges create?

44. Is Association membership an efficient or effective approach for the regulation of firms that trade across multiple exchanges but do not trade off-

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[133] *See* How to Become a Member, FINRA, *http://www.finra.org/Industry/Compliance/Registration/MemberApplicationProgram/HowtoBecomeaMember/index.htm* (last visited on March 9, 2015).

[134] *See* NASD Rule 1010—Membership Proceedings, which sets out the substantive standards and procedural guidelines for the FINRA membership application and registration process.

[135] *See* Section V.C. discussing the costs of joining FINRA.

exchange? Are there more effective alternatives?

45. Under the proposed amendments to the Rule, a Non-Member Firm that conducts no off-exchange trading, but trades on an exchange of which it is not currently a member, would, in accordance with Section 15(b)(8), have to either join an Association or become a member of each exchange upon which it trades. Should the proposed amendments be revised to provide an exemption from Section 15(b)(8) to permit such a Non-Member Firm, with no off-exchange trading, to remain exempt from membership in an Association and continue trading on exchanges of which it is not a member, so long as certain conditions are met, such as the exchange of which it is a member entering into appropriate contractual arrangements such that the exchange is in a position to effectively surveil all of the trading activities of that firm?

46. Should the Commission consider other changes to Rule 15b9–1? If so, why? What specifically should be changed and how?

V. Economic Analysis

As discussed above, the Commission is proposing to amend Rule 15b9–1 to better align the scope of its exemption, in light of today's market activity, with Section 15(b)(8) of the Exchange Act and the Commission's original purpose in adopting Rule 15b9–1. Currently, a broker-dealer can engage in unlimited proprietary trading in the off-exchange market without becoming a member of an Association, so long as its proprietary trading activity is conducted with or through another registered broker-dealer. For a broker-dealer that trades electronically across a range of exchange and off-exchange venues, however, the individual exchanges of which the broker-dealer may be a member are not well-positioned to oversee the off-exchange activity of the broker-dealer, as was previously discussed. The Commission preliminarily believes that this oversight role can best be fulfilled by an Association, which is the SRO intended and authorized by Congress to regulate the trading activity of off-exchange market participants, monitor their financial and operational condition, and enforce their compliance with federal securities laws and Association rules.

The Commission is sensitive to the economic effects of its rule, including the costs and benefits and effects on efficiency, competition, and capital formation. Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking pursuant to the Exchange Act, and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[136] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the effect such rules would have on competition.[137] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[138]

The Commission discusses below a number of economic effects that are likely to result from the proposed amendments. As discussed in detail below, many of the effects are difficult to quantify with any degree of certainty. Although the Commission is providing estimates of direct compliance costs where possible, the Commission also anticipates that broker-dealers affected by the proposed amendments, as well as competitors of those broker-dealers, may modify their business practices regarding the provision of liquidity in both off-exchange markets and on exchanges. Consequently, much of the discussion below is qualitative in nature, but where possible, the Commission has provided quantified estimates.[139]

A. Baseline

1. Regulatory Structure and Activity Levels of Non-Member Firms

The Exchange Act governs the way in which the U.S. securities markets and its broker-dealers operate. Section 3(a)(4)(A) of the Act generally defines a ''broker'' broadly as ''any person engaged in the business of effecting transactions in securities for the account of others.'' [140] In addition, Section 3(a)(5)(A) of the Act generally defines a ''dealer'' as: ''any person engaged in the business of buying and selling securities for . . . such person's own account through a broker or otherwise.'' [141] The Commission oversees approximately 4,209 broker-dealers, of which approximately 4,057 are members of FINRA, currently the only Association.[142]

Generally, any firm that interacts directly with a securities exchange must register with the Commission as a broker-dealer to gain direct access to the exchange. Consequently, there is diversity in the size and business activities of broker-dealers.[143] Carrying broker-dealers hold customer funds and securities; some of these are also clearing broker-dealers that handle the clearance and settlement aspects of customer trades, including record-keeping activities and preparing trade confirmations.[144] However, during the fourth quarter of 2014, only 284 of the 4,184 registered broker-dealers were classified as carrying or clearing broker-dealers. Thus, the majority of broker-dealers engage in a wide range of other activities, which may or may not include handling customer accounts. These other activities include intermediating between customers and carrying/clearing brokers; dealing in government bonds; private placement of securities; effecting transactions in mutual funds that involve transferring funds directly to the issuer; writing options; acting as an exchange floor broker; and the provision of liquidity to securities markets, which includes, but is not limited to, the activities of registered market makers.

Broker-dealers are diverse in size as well as scope of activity. Most broker-dealers are small, with 67% of broker-dealers employing 10 or fewer registered individuals and only 4% of broker-dealers employing over 151 registered individuals.[145] Although the majority of broker-dealers are small, there are a few very large broker-dealers as well. Further, while there are many registered broker-dealers, a small minority of broker-dealers controls the majority of broker-dealer capital and has the ability to affect the allocation of capital to liquidity provision. As of December 31, 2014, the majority of broker-dealers each had total capital of less than $500,000, while the ten largest broker-dealers in terms of capital accounted for more than 53% of total broker-dealer

[136] 15 U.S.C. 78c(f).

[137] 15 U.S.C. 78w(a)(2).

[138] *Id.*

[139] *See* Section V.C. for further discussion of the difficulties in estimating market quality effects likely to result from the proposed amendments.

[140] 15 U.S.C. 78c(4)(A).

[141] 15 U.S.C. 78c(5)(A).

[142] There were approximately 4,209 broker-dealers registered with the Commission as of March 2015.

[143] A firm that wishes to transact business upon an exchange without becoming a broker-dealer can do so by engaging a broker-dealer to provide market access and settlement services. While effecting transactions in the off-exchange market does not require registering as a broker-dealer, it does require obtaining the services of a broker-dealer to handle settlement at a minimum.

[144] Based on December 2014 FOCUS data.

[145] *Id.*

capital, with each disclosing more than $10 billion in total capital.[146]

As of March 2015, 125 of the approximately 4,209 registered broker-dealers were not members of FINRA, currently the only Association. The Commission believes the majority of Non-Member Firms rely on the Rule's exemption from Association membership.[147] Because of the exclusion for proprietary trading, a broker-dealer that does not carry customer accounts is not required to join an Association, even when that broker-dealer has substantial off-exchange trading activity.

Non-Member Firms are diverse in their types and activities. Of the 125 Non-Member Firms, 77 disclose engaging in floor activities on a national securities exchange, as reported on Form BD.[148]

There is significant diversity in the business models of Non-Member Firms. Some Non-Member Firms may limit their trading to a single exchange, while others trade on multiple venues possibly including off-exchange venues like ATSs. Some firms are significant contributors to both off-exchange and exchange volume. Because any off-exchange activity that involves a FINRA member firm (''Member Firm'') generates certain audit trail data, FINRA and the Commission are able to quantify the aggregate off-exchange activity of Non-Member Firms.[149] During the fourth quarter of 2014, there were 104.5 billion orders reported in the off-exchange market. Of these 104.5 billion orders, 36.9 billion (35.31%) were received from Non-Member Firms.[150] Non-Member Firms submitted 44.99% of all orders within ATSs in the fourth quarter of 2014.

Although the Commission can observe the aggregate off-exchange trading of Non-Member Firms, it is unable to quantify the off-exchange trading of all Non-Member Firms on an individual basis because Member Firms currently are not required to report the identifiers of Non-Member Firms with whom they transact to OATS.[151] However, some Member Firms voluntarily report the exchange-issued identifiers of the Non-Member Firms with which they interact.[152] Using this data, the Commission can estimate the ATS activity level of the 14 Non-Member Firms that connected to ATSs directly without the intermediation of another broker-dealer during the fourth quarter of 2014.[153] Based on this data, at least 19.31% of all ATS orders is attributable to the Non-Member Firm that was the most active in ATS orders during the review period.[154] The least active of the 14 identifiable Non-Member Firms has almost no order activity. In total, five of the 14 Non-Member Firms are each responsible for 1% or more of all orders sent directly to an ATS for the review period.

The business of providing liquidity off-exchange is competitive. Off-exchange equity trading occurs across many trading venues. In May 2012, 44 ATSs actively traded NMS stocks, comprising 12.12% of NMS share volume.[155] Furthermore, 255 broker-

[146] *Id.*

[147] *See supra* note 77. Historically, these floor brokers had only incidental trading on exchanges of which they were not members, and limited off-exchange trading activity. The background and history of Rule 15b9–1 are discussed in Section I.

[148] *See* Form BD data for Non-Member Firms during March of 2015. Of the 125 Non-Member Firms, 77 Non-Member Firms disclose engaging in floor activities on a national securities exchange; 76 firms disclose acting as a put and call broker or dealer or option writer; and 89 firms disclose trading securities for their own account. Other businesses cited by multiple Non-Member Firms include: National securities exchange commission business other than floor activities (6); making inter-dealer markets in corporate securities off-exchange (5); selling corporate debt securities (2); dealing in government securities (4); and other business (18).

Currently, a Non-Member Firm that is a member of a single exchange but is not engaged in floor-broker activity may engage in trading upon other exchanges using access provided by a broker-dealer that is an exchange member of the destination exchange. These single-exchange member Non-Member Firms may also engage in off-exchange trading with or without the intermediation of a Member Firm. Under the proposed amendments, both of these activities would be disallowed except as outlined in the Floor Member Hedging Exemption (*see* Section II.D.) and the Regulation NMS Routing Exemption (*see* Section II.E.).

[149] Most off-exchange interactions involve a Member Firm at some point in the order audit trail for routing, and therefore produce OATS data, although identification of the firm that submits the order is not required by OATS. Interactions between Non-Member Firms without the involvement of a Member Firm are possible and would not generate audit trail data, but the Commission believes these interactions are infrequent for two reasons. First, all ATSs are operated by Member Firms, so all orders submitted to ATSs are reported to OATS. Second, although two Non-Member Firms could theoretically interact on a Non-Member Firm operated single dealer platform, the Commission is unaware of any single dealer platform that is operated by a Non-Member Firm. Such a platform would be visible in OATS data as a routing and execution destination if it were accessed by Member Firms. Although it is possible that a Non-Member Firm could approach another Non-Member Firm directly to negotiate a transaction outside of an automated venue, the Commission believes large Non-Member Firms transact with each other almost exclusively through ATSs and do not seek each other out as trading partners. Further information about off-exchange trading outside of ATSs is provided by Tuttle, Laura, 2014, Over-the-Counter Trading: Description of Non-ATS OTC Trading in National Market System Stocks, *available at http://www.sec.gov/dera/staff-papers/white-papers/otc-trading-white-paper-03-2014.pdf.*

[150] Data provided by FINRA. This does not include activity submitted by firms not registered as broker-dealers, including data on buy-side activity because the data was screened to include only Non-Member Firms.

[151] *See supra* note 84.

[152] Data provided by FINRA. This does not include activity submitted by firms not registered as broker-dealers, including data on buy-side activity. In the fourth quarter of 2014, approximately 46.42% of ATS orders from Non-Member Firms included an exchange-issued identifier that allows identification of the Non-Member Firm submitting an order. The set of ATS clients that are not FINRA members also includes substantial buy-side activity, but this analysis is limited to firms that are also registered broker-dealers: The 125 Non-Member Firms.

Although the analysis here focuses on ATS activity, Non-Member Firms interact with Member Firms outside of ATSs as well, primarily on single-dealer platforms. Across all off-exchange executions, in the fourth quarter of 2014, 3.26% of share volume (10.56% of dollar volume) was attributable to the trading of Non-Member Firms.

[153] Although these 14 Non-Member Firms connect to ATSs directly without the assistance of another broker-dealer, the ATSs are operated by Member Firms and these orders are therefore permitted under the current rule.

The Commission believes that these 14 Non-Member Firms represent a subset of the largest Non-Member Firms that actively trade across multiple exchanges and off-exchange and thus may not be representative of the broader set of 125 Non-Member Firms. As such, estimates of these 14 firms' ATS activity levels and the regulatory fees that the activity would generate exceed those expected from typical Non-Member Firms.

[154] Non-Member Firms submitted 32.9 billion of the 66.8 billion ATS orders during the fourth quarter of 2014. ATSs reported Non-Member MPIDs for 15.3 billion of these Non-Member Firm orders. The Non-Member Firm most frequently identified as the source of ATS orders submitted 4.9 billion ATS orders (7.30% of all orders and 39.20% of all Non-Member Firm ATS orders for which a Non-Member Firm MPID is reported). With the assumption that this firm also submitted 39.20% of the Non-Member Firm ATS orders to ATSs that do not report Non-Member Firm MPIDs, this firm would account for 19.31% of all ATS orders.

ATSs generally provide the exchange-issued MPIDs of Non-Member Firms submitting orders either for all orders or for none of the orders received directly from Non-Member Firms. For purposes of our analysis, we assume that the proportion of orders submitted by individual Non-Member Firms to ATSs that report identifiers is equal to that proportion for ATSs that do not report Non-Member Firm MPIDs. It is possible that some Non-Member Firms transact only in ATSs that do not report these identifiers to FINRA; if that is true, our estimate of the activity level of the 14 identified Non-Member Firms would be upwardly biased because we would attribute the ATS volume of the unidentified Non-Member Firms to those that have been identified. Furthermore, our estimate that 14 Non-Member Firms connect to ATSs directly would be downward biased. It is also possible that the proportions of orders attributable to individual Non-Member Firms are materially different on ATSs that do not report Non-Member Firm identifiers, although any error introduced by this would likely not be directional. Additionally, some Non-Member Firms may submit orders to Member Firms that are then routed to ATSs or elsewhere off-exchange. Such activity would cause us to underestimate the activity of these 14 Non-Member Firms within ATSs, although such activity would still be counted at the aggregate Non-Member Firm level.

[155] Tuttle, Laura, October 2013, Alternative Trading Systems: Description of ATS Trading in National Market System Stocks, *available at http://www.sec.gov/marketstructure/research/*

dealers transacted a further 18.75% of NMS share volume off-exchange without the involvement of an ATS.[156] Although many market participants provide liquidity within this market, Non-Member Firms are particularly active within ATSs, as discussed above. Although Non-Member Firms may trade in the Non-ATS segment of the off-exchange market, the Commission preliminarily believes they rarely act as liquidity suppliers outside of ATSs.[157]

While some Non-Member Firms trade actively off-exchange, some of these firms also supply and demand liquidity actively on multiple exchanges.[158] The Commission is able to identify the activity of 13 of the 14 Non-Member Firms identified as connecting directly with ATSs on exchanges operated by BATS, NASDAQ–OMX, and NYSE during May of 2014. The data show that these Non-Member Firms contribute substantially to exchange volume.[159] On these exchanges, during May 2014, these 13 large Non-Member Firms that connect directly to ATSs participate in at least 17.25% of all exchange trading volume. The highest Non-Member Firm participation rate in the data is on BATS–Y, where 27.31% of trade volume involves Non-Member Firms that also connect directly to ATSs. The lowest participation rate is on NYSE, where 5.54% of trading involves Non-Member Firms that connect directly with ATSs. One of the Non-Member Firms that connects directly with ATSs cannot be identified in exchange data.[160] The 13 Non-Member Firms that are observed trading on exchanges tend to trade across the majority of exchanges represented in the exchange data sample.[161]

The market for liquidity provision on equity exchanges is also competitive. For example, Nasdaq-listed equities, for which the Commission has relevant data,[162] each had 13 to 80 market makers registered to provide liquidity on Nasdaq as of December 2014. The median Nasdaq-listed equity had 36 registered market makers, and 95% of securities had 20 or more registered market makers. Because Nasdaq is not the only exchange trading its listed equities, these statistics underrepresent the number of firms in the market that provide liquidity in Nasdaq-listed equities. Although the Commission does not have readily available data to count the number of market makers in equities listed on other exchanges, the Commission preliminarily believes that the figures for Nasdaq-listed equities illustrate the magnitude of market makers in equities more generally. Additionally, the Commission notes that while the number of market makers represents the number of firms in the business of providing liquidity, it does not necessarily indicate whether each market maker is an active competitor. However, the Commission believes that many market makers actively compete to provide liquidity. The Commission currently lacks data to quantify the liquidity provision activity attributable to Non-Member Firms.

2. Current Market Oversight

The surveillance and regulation of each broker-dealer is dependent upon its individual SRO membership status. Each SRO that operates an exchange has responsibility for overseeing trading that occurs on the exchange it operates. Because of this, SROs that operate an exchange possess expertise in supervising members who specialize in trading the products and order types that may be unique or specialized within the exchange. This expertise complements the expertise of an Association in supervising cross-exchange and off-exchange trading activity.[163] Exchanges generally have not monitored trading that their members conduct on other venues.

Approximately 68 Non-Member Firm broker-dealers are members of a single exchange that supervises their activity overall. Exchanges regulate trading by broker-dealers on their exchange and generally may focus examinations on the financial and operational requirements associated with their membership. These requirements share many commonalities across SROs, such as net capital requirements and books and records requirements. Because many broker-dealers are members of multiple SROs with similar requirements, one SRO is appointed as the broker-dealer's DEA.[164]

All registered broker-dealers are required to join an Association unless they comply with Section 15(b)(8) of the Act or Rule 15b9–1. The vast majority of broker-dealers join an Association and, since there is currently a single Association, with the exception of Non-Member Firms, broker-dealers are subject to relatively uniform regulatory requirements and levels of surveillance and supervision. The supervision by FINRA, which is currently the only Association, is more robust than that of individual exchange SROs because its rule set addresses its need to supervise a market that is fragmented across many trading venues and more opaque than exchange trading.[165] Specifically, FINRA's rule set has provisions related to business conduct, financial condition

alternative-trading-systems-march-2014.pdf (revised March 2014).

[156] Transaction volume off-exchange outside of ATSs includes internalization, in which a broker-dealer fills orders from its own inventory without interacting directly with an exchange. Tuttle, Laura, March 2014, OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks, *available at http://www.sec.gov/dera/staff-papers/white-papers/otc-trading-white-paper-03-2014.pdf.*

[157] OATS data suggests that Non-Member Firms do not supply off-exchange liquidity to Member Firms outside of ATSs and the Commission believes that Non-Member Firms rarely transact with each other outside of ATSs. *See supra* note 149.

[158] *See* Section V.D.3 for discussion of SRO cross-monitoring capabilities.

[159] The estimates include only Non-Member Firms that connect directly to at least one ATS that reports Non-Member Firm MPIDs in OATS. Consequently, some Non-Member Firms are not included in these estimates. Therefore, the estimates underestimate the importance of Non-Member Firms to exchange-based activity in aggregate.

[160] Data from off-exchange markets and exchanges is matched on a firm-name basis in this analysis. It is possible that one firm that cannot be identified in the exchange data is present under a name that is not readily linked to the firm name cited in the off-exchange data.

[161] Data for Nasdaq-OMX is not broken down by exchange, but is instead aggregated at the holding company level. Exchange-level data was provided by BATS and NYSE.

[162] Data from Center in Research in Security Prices (CRSP).

[163] *See* Section I.B. discussing the requirement for SROs to examine for and enforce compliance with the Exchange Act, and the rules and regulations thereunder.

[164] A DEA is an SRO assigned by the SEC that has certain specific supervisory responsibility for a broker-dealer. The DEA usually performs financial and operations examination activities on behalf of all SROs of which the broker-dealer is a member, although SROs may also allocate other regulatory responsibilities under Rule 17d–2. *See supra* note 69. These examinations, however, do not generally extend to compliance with trading rules imposed by other SROs; nor do they facilitate surveillance for activity across market centers. DEAs therefore cannot substitute for the surveillance of cross-market and off-exchange trading provided by an Association. *See* 17 CFR 240.17d–1. FINRA serves as the DEA for the majority of Member Firms; there are exceptions, mostly involving firms that have specialized business models that focus on a particular exchange that is judged to be best situated to supervise the Member Firm's activity. These firms are, however, subject to the same supervision of their trading activity as other Member Firms for whom FINRA does act as DEA. Under the proposed amendments, Non-Member Firms that join FINRA may or may not be assigned to FINRA for DEA supervision. A firm with a specialized business model focusing on a single exchange with floor activity may be able to continue trading off-exchange under the proposed floor member hedging exemption without joining FINRA.

[165] Comprehensive reporting requirements for all Member Firms that trade off-exchange give FINRA information on market activity levels and market conditions off-exchange. Because most off-exchange venues do not disseminate information on the liquidity available in their systems, comprehensive information from all participants is necessary for FINRA to analyze and surveil the off-exchange market. *See infra* note 204 for a discussion of the off-exchange trading environment; *see also* Section I.B. for a discussion of the differing scope of exchange SRO and Association rule sets.

and operation, and supervision that may differ materially from exchange SRO rule sets.[166]

The existing Association, FINRA, serves crucial functions in the current regulatory structure.[167] FINRA has primary responsibility for overseeing off-exchange trading.[168] Furthermore, FINRA provides cross-market trading supervision of broker-dealers that the exchanges currently are not well-positioned to provide in light of the statutory framework that places responsibility for off-exchange trading with an Association. Exchanges generally do not have a detailed set of member conduct rules and non-exchange-specific trading rules and have limited access to data,[169] thus allowing such broker-dealers and their personnel to conduct business under a less specific regulatory regime than FINRA members. On the other hand, FINRA has sought to establish a robust regulatory regime for broker-dealers, including broker-dealers conducting business in the off-exchange market, and developed surveillance technology and specialized regulatory personnel to provide surveillance, supervision, and enforcement of activity occurring off-exchange. Consequently, the current regulatory structure achieves cross-market and off-exchange supervision through the surveillance actions of FINRA and its examination of its members.

Currently, Non-Member Firms transact heavily in the course of normal business activities within venues regulated by SROs of which they are not members. This is very different from when Rule 15b9–1 was first adopted. The Act provides for regulation of exchange trading by the exchanges themselves; it further provides for supervision of off-exchange trading by an Association. Although the Act provides a limited and targeted exception to Association membership requirements for broker-dealers, its approach to effecting supervision is relatively uniform: Broker-dealers must be members of the SROs that regulate the venues upon which they transact. For each trading venue, whether an exchange or the off-exchange market as a whole, the responsible SRO (an exchange SRO or FINRA) is obligated and empowered to fulfill its regulatory responsibilities through its authority to adopt rules, surveil the markets, examine its members' activities and bring enforcement actions when necessary. To the extent that the current regulatory structure undermines this functional approach, the ability of SROs to fulfill their responsibilities to protect investors and promote fair and orderly markets may be compromised.

Comprehensive supervision of cross-market and off-exchange activity requires data on off-exchange activity, but this data for Non-Member Firms is often not readily available to regulators.[170] FINRA's rules require that nearly all Member Firms report order audit trail data daily.[171] This data records the origination, receipt, execution, routing, modification or cancellation of every order a Member Firm handles, with limited exceptions for certain activities including market-making. Additionally, FINRA currently has RSAs with most exchanges [172] that provide FINRA with detailed data that often allow FINRA to comprehensively identify the market-wide activity of broker-dealers, and to surveil behavior for violative activity that might otherwise go undetected on an exchange-specific surveillance basis. However, a significant amount of activity remains missing from FINRA's existing audit trail data (OATS) because it does not include the orders that otherwise would be reported by Non-Member Firms if they were members, and does not identify executions as those of a broker-dealer. Non-Member Firm activity that involves a Member Firm (such as an ATS order or an order routed through a Member Firm) does appear in OATS, although the identity of the Non-Member Firm sending the order is not required to be reported.[173] Furthermore, some off-exchange activity that does not involve a Member Firm (and thus creates no OATS data record) may be entirely unsurveiled by FINRA and possibly not subject to rules that were intended to universally govern off-exchange activity. In particular, an off-exchange trade between two Non-Member Firms is not subject to FINRA's audit trail and trade reporting rules.

Because Non-Member Firms are not required to join an Association, they are not required to pay the costs of Association membership, which could be significant, especially for Non-Member Firms with substantial trading activity. FINRA members currently pay a TAF for all equity sales transactions that are not performed in the firm's capacity as a registered specialist or market maker upon an exchange. The Commission estimates that the annual TAF associated with ATS trading for some Non-Member Firms would be as high as $3.2 million per year.[174] Additionally, a substantial portion of Non-Member Firms' exchange-based activity may be subject to TAF as well.[175] These estimates of TAF have substantial uncertainty. As discussed previously, the Commission believes that FINRA may need to consider revising its fee structure to reflect the business model of these firms and this may significantly affect their potential FINRA fee burden.[176]

Furthermore, FINRA currently cannot assess Non-Member Firms Section 3 fees for off-exchange trading. The Section 3 fee is the second of two primary FINRA fees (the other being TAF) that are assessed upon each off-exchange sale by or through a FINRA member. Under Section 31 of the Act,[177] SROs must pay transaction fees based on the volume of their covered sales. These fees are designed to offset the costs of regulation incurred by the government—including the Commission—for supervising and regulating the securities markets and securities professionals. FINRA obtains money to pay its Section 31 fees from its membership, in accordance with Section 3 of Schedule A to the FINRA By-Laws. FINRA assesses these Section 3 fees on the sell side of each off-exchange trade, when possible. When the sell side of an off-exchange transaction is a Non-Member Firm and the seller engages the services of a

[166] *See supra* notes 91–94 and accompanying text.

[167] *See* Section I.A. for further discussion of the role of Associations in market oversight.

[168] *See* Section I.B. for further discussion of the responsibilities of an Association.

[169] *See supra* note 76.

[170] If the Commission approves the NMS Plan submitted by the SROs to create, implement, and maintain a CAT, the CAT would be able to provide the SROs and the Commission with such data on Non-Member Firms. *See* Exchange Act Release No. 67457 (July 19, 2012), 77 FR 45721 (August 1, 2012).

[171] *See generally* FINRA Rule 7400 Series—Order Audit Trail System.

[172] FINRA has RSAs with all exchanges operated by Intercontinental Exchange, Nasdaq-OMX, and BATS. Together, these exchanges accounted for 99.6% of exchange-based share volume in Tape A, B, and C securities during October 2014, based on data available on the BATS Web site. *See http://www.batstrading.com/market_data/market_volume_history/* (last visited March 9, 2015).

[173] FINRA has proposed amendments to its rules pertaining to identification of Non-Member Firms in OATS data. *See supra* note 84.

[174] TAF incurred for off-exchange activity for Non-Member firms would be unavoidable as the fee is currently structured. FINRA assesses it directly on FINRA members. TAF is discussed further in Section V.C.2.b.

[175] Schedule A of the FINRA By-Laws outlines which transactions are subject to the TAF. Generally, equity sales both on and off-exchange are subject to the TAF unless the member is acting in the capacity of a specialist or market maker on the exchange where the transaction was effected.

[176] *See supra* note 95. Under the current TAF schedule, Member Firms may realize some cost savings because they would no longer be assessed TAF when they buy shares from a Non-Member Firm off-exchange. This is discussed further in Section V.B.3.

[177] 15 U.S.C. 78ee.

clearing broker that is a Member Firm, FINRA can assess the Section 3 fee against the Member Firm clearing broker.[178] When the seller is a Non-Member Firm that self-clears, FINRA has no authority to assess the Section 3 fee against the seller. In such case, FINRA will seek to assess the fee against the buyer, if the buyer includes a Member Firm counterparty or a Member Firm acting as clearing broker for a Non-Member Firm buy side counterparty. Given that any firm that carries customer accounts is required to be a member of an Association, firms that represent the trading of the investing public may bear the fees that would be otherwise assigned to Non-Member Firms trading proprietarily in the off-exchange market. These costs may be passed on to the investing public in whole or in part. Regardless of who ultimately bears the Section 3 fees, these Non-Member Firms may face lower off-exchange trading costs than Member Firms due to the allocation of these fees.

B. Broad Economic Considerations, Including Effects on Efficiency, Competition and Capital Formation

As discussed above, the Commission is proposing amendments to Rule 15b9–1 to address the off-exchange trading activity that may not currently be subject to effective regulatory oversight that has developed with the advent of cross-market proprietary trading. In addition to the specific, individual benefits and costs discussed below, the Commission expects the proposed amendments to have several broad economic effects, including effects on efficiency, competition, and capital formation. These effects are described in this section.

1. Effects on Regulatory Supervision

Non-Member Firms are significant contributors to off-exchange order and trade activity, yet are not under the jurisdiction of an Association that supervises off-exchange trading activity. The Commission preliminarily believes the current exemption of Non-Member Firms from Association membership undermines the effectiveness of regulatory supervision. For example, reliance by Non-Member Firms on the Rule 15b9–1 exemption leaves FINRA charged with responsibility for the off-exchange market without jurisdiction over broker-dealers that conduct a substantial amount of off-exchange trading activity. It also undermines the ability of an Association to apply a consistent set of conduct, supervisory, and other rules to off-exchange market participants, and to effectively surveil the trading activity of broker-dealers with a significant presence in the off-exchange market.[179]

As discussed further below, the Commission believes the proposed amendments will have a beneficial effect on the efficiency of regulation of the equity markets.[180] In particular, some broker-dealers are currently overseen by individual exchanges, which are not well-positioned to oversee the off-exchange and cross-market activity of the broker-dealer. Under the proposal, these broker-dealers would be supervised by an Association that has this expertise. This improvement in regulatory oversight of the off-exchange market should achieve more uniform and effective regulatory supervision of off-exchange and cross-exchange trading practices by broker-dealers.

The Commission is aware that some of the 125 Non-Member Firms trade primarily on a single exchange in a floor-based capacity. For these firms, especially those with specialized business models that operate primarily on one exchange, their current exchange (not an Association) may be best equipped to provide efficient supervision. The Commission believes that many of these firms will not need to join an Association to comply with the proposed amendments.

2. Firm Response and Effect on Market Activity

Although Non-Member Firms could seek to comply with the proposed amendments in multiple ways, each route could involve changes to firms' business models. Some Non-Member Firms limit their trading to exchanges of which they are members, and the Commission believes they do not trade off-exchange other than to hedge positions gained through floor broker activity. These firms will remain exempt from the requirement to become a member of an Association, if they comply with the Rule as proposed to be amended.[181] Other firms will no longer be exempt, and will need to take action to comply with the amended rule. Under the revised Rule, a Non-Member Firm that trades off-exchange, or upon exchanges of which it is not a member, can comply in four ways. The first option would be to join an Association. This option does not require the Non-Member Firm to restrict its current trading practices beyond those necessary to comply with the rules of FINRA. The second option would be to join all exchanges upon which the Non-Member Firm wishes to trade, and to cease any off-exchange trading, other than off-exchange trading consistent with the floor-broker hedging exemption. Third, a Non-Member Firm could comply by trading solely upon those exchanges of which it is already a member, consistent with the statutory exception in Section 15(b)(8).[182] Finally, a Non-Member Firm could cease trading equity securities.

The changes Non-Member Firms make to their business model in order to comply with the amendments may affect competition in the market for off-exchange liquidity provision. In particular, Non-Member Firms may be less willing to compete to provide liquidity off-exchange, decreasing off-exchange liquidity. For example, Non-Member Firms may choose to cease their off-exchange activity rather than join an Association—although it seems likely that firms that trade heavily in the off-exchange market may find it less costly to join an Association.[183] In addition, Non-Member Firms that choose to join an Association may reduce their off-exchange trading because joining an Association would increase variable costs to trade in the off-exchange market, as these trades will incur TAF and possibly additional Section 3 fees.[184] An increase in cost

[178] The seller's clearing broker may pass that fee on to the Non-Member Firm.

[179] *See supra* notes 91–94 and accompanying text.

[180] *See* Section V.C.1.

[181] Changes to the exclusion for proprietary trading are discussed in Section II.C. Changes to the proposed floor member hedging exemption are discussed in Section II.D.

[182] 15 U.S.C. 78*o*(b)(8).

[183] Firms that do not connect directly may trade on ATSs through a Member Firm at much lower activity levels. For firms with very limited off-exchange activity, ceasing off-exchange activity is likely to be less costly than joining an Association. The costs of joining FINRA are discussed in detail in Section V.C.2; for firms with very limited off-exchange activity, it is unlikely that the profits generated from this activity would offset FINRA membership costs. However, for firms that generate profits from off-exchange activities that exceed FINRA membership costs, it may be less costly for these firms to join FINRA than to cease their off-exchange activity. Firms with very low ATS activity are unlikely to directly connect to an ATS, instead accessing ATSs through a Member Firm.

The Commission is unaware of any Non-Member Firms operating single dealer platforms upon which such firms could provide liquidity to orders routed by Member Firms outside of an ATS.

[184] As previously noted, FINRA may need to consider reevaluating the structure of the TAF to assure that it appropriately takes into account the business model of certain Non-Member Firms that may join FINRA as a result of the proposed amendments. *See supra* note 95. The Commission's analysis of TAF is based on current TAF structure as outlined in the FINRA By-Laws, Schedule A. TAF and Section 3 fees are discussed further in Section V.C.2.b. Firms will also face additional fixed costs both to establish and maintain Association membership; those costs are discussed in Section V.C.2.

would reduce the profitability of off-exchange trading and thus potentially reduce off-exchange trading.

The removal of this liquidity could either improve or degrade execution quality on ATSs.[185] To the extent that institutional investors transacting in ATSs are seeking institutional investor counterparties that are not proprietary trading firms for their transactions, the removal of Non-Member Firm liquidity may be seen by some institutional investors as improving liquidity quality within ATSs.[186] It is also possible that reducing the activity of Non-Member Firms within ATSs may result in more ATS liquidity, if Non-Member Firms are acting as net takers of liquidity within these systems.[187] Regardless, liquidity levels in ATSs may change. In addition, these firms may reduce their off-exchange trading outside of ATSs such as on single-dealer platforms. It is possible that this will result in a transfer of volume from off-exchange venues to exchanges, but it is also possible that overall market trading volume will diminish if decreased volume from off-exchange trading does not migrate to exchanges.

Changes in business models for Non-Member Firms may affect market quality on exchanges as well. In addition to trading extensively in the off-exchange market, many Non-Member Firms are among the most active participants on exchanges. Business model changes by these firms may lead to less exchange liquidity for several reasons. First, Non-Member Firms that choose not to join an Association would no longer be able to rely on the rule and trade indirectly on exchanges of which they are not members.[188] Second, Non-Member Firms that do not join an Association would no longer be able to access off-exchange liquidity to unwind positions acquired on exchanges, except as outlined in the floor member hedging exemption. This may reduce their willingness to provide liquidity upon exchanges.[189] Third, Non-Member Firms that choose to join an Association may be subject to additional variable costs (primarily regulatory fees) on their exchange-based trading as well as on their off-exchange trading.[190] These firms may respond by trading less actively on exchanges. Finally, Non-Member Firms may choose to cease trading equity securities rather than join an Association or change their business models. Reduced liquidity upon exchanges can result in higher spreads and increased volatility. Increased spreads on exchanges can lead to increased costs for off-exchange investors as well as investors transacting on exchanges, because most off-exchange transactions (including many retail executions) are derivatively priced with reference to prevailing exchange prices.

The Commission preliminarily believes that the proposed amendments are not likely to have an economically meaningful effect on direct capital formation (the assignment of financial resources to meet the funding requirements of a profitable capital project, in this case, the provision of liquidity to financial markets). However, the Commission believes that the changes in allocation of regulatory fees and more efficient supervision within the off-exchange market may result in improved efficiency of capital allocation by the financial industry. Currently, Non-Member Firms face lower regulatory costs and a lower degree of regulatory scrutiny of their off-exchange trading activity than Member Firms. While the Commission believes that this imposes certain costs on other market intermediaries and the investors they represent, there is another externality as well: Over-commitment of liquidity both to exchanges and the off-exchange market.[191] This over-commitment is likely to have some positive effects on capital markets, such as lower quoted spreads on exchanges. In addition to lowering immediate execution costs on exchanges, lower exchange quoted spreads are likely to reduce transaction costs off-exchange as well, because off-exchange trades are typically priced with reference to quoted exchange prices. Adoption of the proposed amendments may reduce the capital commitment of Non-Member Firms to equity market liquidity provision. It is possible that in response current Member Firms may choose to commit additional capital to liquidity provision when the trading environment has more uniform regulatory requirements. These reallocations of capital may improve or degrade levels of liquidity, spreads and volatility measures on exchanges and within the off-exchange market.

The magnitude of these competitive effects is impossible for the Commission to determine at this time for a number of reasons. First, these effects involve strategic decisions by Non-Member Firms that the Commission cannot predict, and a competitive response that the Commission lacks information to anticipate. Second, even if the Commission could predict the likely changes in capital commitment by market participants, the Commission lacks information on how capital commitment by financial firms maps into market quality measures such as spreads, levels of liquidity, and execution costs.[192] Due to the

[185] Non-Member Firms are likely to also reduce their off-exchange trading outside of ATSs, such as on single-dealer platforms. However, Non-Member Firms can only take (not make) liquidity on these platforms. It is possible that additional off-exchange liquidity may be available outside of ATSs as a result of the proposed amendments to Rule 15b9–1 due to a reduction in Non-Member Firm trading on single dealer platforms.

[186] Industry white papers sometimes discuss the concept of natural counterparties for institutional trades. These papers may explicitly or implicitly identify proprietary automated trading firms as sources of information leakage in dark pools. *See e.g.,* Mittal, Hitesh, Are You Playing in a Toxic Dark Pool? A Guide to Preventing Information Leakage, 2008 ITG white paper, *available at http://www.itg.com/news_events/papers/ITGResearch_Toxic_Dark_Pool_070208.pdf,* and Dark Pools and Toxicity Assessment, 2014, EY White Paper, *available at http://www.ey.com/Publication/vwLUAssets/Dark_pools_and_toxicity_assessment/$FILE/Dark%20pools%20and%20toxicity%20assessment_FINAL_LR.pdf.* Other industry participants describe a more benign role for automated trading firms as liquidity providers in ATSs. *See* High-Speed Traders Go Dark, 2012, Markets Media Commentary, *available at http://marketsmedia.com/high-speed-traders-go-dark/.*

[187] There is some evidence that proprietary electronic trading firms are net takers of liquidity in equity markets, although the evidence is not conclusive. Using NASDAQ data from 2008–2010, Carrion estimates that these firms supply liquidity to 41.2% of trading dollar volume and take liquidity in 42.2% of trading dollar volume. *See* Carrion, Al, 2013, ''Very fast money: High-frequency trading on the NASDAQ,'' Journal of Financial Markets 16, 680–711. Al Carrion currently serves as an Economic Fellow within the Division of Economic and Risk Analysis. Another study finds that electronic trading firms act as net liquidity suppliers during periods of extreme price movements. *See* Brogaard, Moyaert, Riordan, Shkilko and Sokolov, 2015, ''High Frequency Trading and Extreme Price Movements,'' working paper.

[188] Currently, a Non-Member Firm can indirectly access an exchange of which it is not a member through a firm that is an exchange member. In light of the proposed elimination of the exclusion for proprietary trading, this activity would not be consistent with the proposed amendments, unless the floor member hedging exemption or Regulation NMS routing exemption applies.

[189] These firms could unwind positions on other exchanges, but the cost to do so may be higher than if all liquidity, including off-exchange liquidity, were available.

[190] It is possible Non-Member Firms that choose to join an Association may avoid some additional costs by registering as market makers on additional venues, mitigating these charges. Furthermore, they may see a reduction in fees that were formerly paid to their DEA if FINRA assumes that role.

[191] There is likely to be a corresponding underinvestment of capital somewhere else.

[192] The Commission has considered whether it is possible to model this response using current data to estimate these effects. Even if CAT data were available today, the Commission believes it would not have sufficient information for this estimation because information on the daily and perhaps intra-day change in committed capital levels is not available. Although the Commission has quarterly data on the net capital of broker-dealers, broker-dealers do not commit all of this capital to liquidity provision in equity markets. Furthermore, on a

complexity of the economic relationship between capital commitment and market quality measures, and inadequate information on individual firm's strategies, cost structures and likely competitive responses, the Commission cannot estimate the likely magnitude of these effects.

3. Competition To Provide Liquidity Is Distorted by Regulatory Costs Borne by Only a Subset of Competitors, Member Firms

Currently, Member Firms bear a number of costs not borne by Non-Member Firms including a number of regulatory fees and indirect costs that are assessed or imposed upon Member Firms. These costs include direct costs such as trading fees that are either assigned only to Member Firms, such as TAF, or in the case of Section 3 fees, Member Firms may be assigned costs that potentially could be assigned to Non-Member Firms selling securities off-exchange. There are indirect costs of disparate regulatory regimes as well. For example, Member Firms bear costs of interacting with regulators to accommodate supervision, and must comply with the rules of an Association as well as rules adopted by the Commission. This inequality in regulatory requirements may distort competitive forces in the market and these potential distortions may be mitigated by the proposed amendments to Rule 15b9–1, to the extent that Non-Member Firms join an Association and subject themselves to comparable fees and regulatory costs imposed on all other Member Firms.

The existing differential regulatory burden of Member Firms and Non-Member Firms may have consequences with respect to market quality both for exchange-based and off-exchange trading. For example, because Non-Member Firms, *ceteris paribus,* currently face lower variable costs of trading compared to Member Firms, Non-Member Firms may be able to provide liquidity at a lower cost than Member Firms. Because a low-cost competitor may be able to quote at a price superior to that of his competitors, investors may incur lower transaction costs than if Non-Member Firms faced the same costs as Member Firms. It may also reduce direct execution costs (such as quoted and effective spreads) for both exchange and off-exchange trades, the latter of which are normally derivatively priced with reference to prevailing exchange quotes. The differential regulatory burden, however, may also reduce depth at best prices because a Member Firm may not be able to trade profitably at a price established by a Non-Member Firm that faces lower regulatory costs. Lower liquidity at best exchange prices implies greater price effect of trades, which may increase trading costs, particularly for large orders. For example, if the best price on an exchange is associated with 100 shares of depth, a 200 share order will exhaust depth at the best price and the second 100 share lot will execute at an inferior price.[193] If depth at best price tends to be larger, it is less likely that an order will exceed the depth available at the best price. The change in best price associated with an execution that exhausts the depth available at the best price is the price effect of the trade upon the exchange. Because the Commission does not have access to consolidated audit trail data, the Commission lacks data to quantify the percent of inside depth provided by Non-Member Firms and the frequency with which only Non-Member Firms are quoting the best price on an exchange. However, the high participation rate of Non-Member Firms in exchange trading suggests they provide a significant fraction of exchange liquidity.[194]

4. Competitive Effects on Off-Exchange Market Regulation

Currently, FINRA is the only Association. It is possible, however, for new Associations to enter the regulatory oversight market and compete with FINRA. The proposed amendments to Rule 15b9–1 may create incentives for a new Association (or Associations) to form. The large Non-Member Firms have commonalities in business models, for example, they typically do not carry customer accounts. They may consider joining an Association concurrently. Because these firms collectively conduct a significant portion of off-exchange volume, the creation of an Association tailored to these firms may be economically viable.

To be registered as an Association, in addition to requirements that parallel the requirements to be a national securities exchange, an Association must ''[b]y reason of the number and geographical distribution of its members and the scope of their transactions'' be able to carry out the purposes of Section 15A.[195] Additionally, for example, the Association must permit any registered broker-dealer that meets the Association's qualification standards to become a member,[196] and it must have rules regarding the form and content of quotations relating to securities sold otherwise than on a national securities exchange that are designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing and publishing quotations.[197] The Association must also be so organized and have the capacity to enforce compliance by its members and persons associated with its members with, among other things, its own rules and the Exchange Act and the rules and regulations thereunder.[198]

The ability to form an Association is characterized by barriers to entry. A new Association would likely incur significant fixed costs to create the infrastructure needed to perform the surveillance and oversight requirements imposed on Associations by statute and regulation. It may also incur substantial costs, including personnel, training, travel, and other costs to provide for an effective surveillance and supervision of the off-exchange market. Indeed, as previously discussed, the only existing Association, FINRA, has resources and demonstrated expertise that enable it to surveil and supervise the off-exchange market. Duplication of that infrastructure could be costly for a new Association.

The proposed amendments may alter barriers to entry and thus affect the potential for competition among regulators of off-exchange markets. Currently the primary barrier to entry is the high fixed-cost involved in forming and operating an Association. If adopted, the amendments would bring nearly all off-exchange trading under the jurisdiction of an Association, including the trading of firms that currently are not members of an Association (Non-Member Firms). If these firms join the only existing Association, FINRA, an Association newly formed after this point may have increased difficulty attracting the members needed to support the high

daily or more frequent basis, a liquidity provider may choose to fully or partially withdraw from the market for any reason.

[193] This assumes no hidden depth at the best price. If non-displayed depth is present at the best price, the remaining 100 shares will be filled at the best price if at least 100 shares of hidden depth exists at the best price.

[194] Participation rates of Non-Member Firms in exchange trading are discussed more fully in Section V.A.1.

[195] *See* 15 U.S.C. 78*o*–3.

[196] *See* 15 U.S.C. 78*o*–3(b)(3). Section 15A of the Exchange Act specifically states that an Association shall not be registered as a national securities association unless the Commission determines, among other things, that ''(3) . . . the rules of the association provide that any registered broker or dealer may become a member of such association and any person may become associated with a member thereof.''

[197] *See* 15 U.S.C. 78*o*–3(b)(11).

[198] *See* 15 U.S.C. 78*o*–3(b)(2).

fixed-costs associated with forming an Association because every broker-dealer that participates in the off-exchange market would already be a FINRA member. This increased difficulty results because many firms may be reluctant to change Associations, either because of the costs to change compliance infrastructures or uncertainty in the regulatory environment of the new Association. Thus, if the proposal results in more firms becoming members of the existing Association, a new Association could face increased difficulties attracting members in the future.

The proposed amendments do, however, temporarily lower the barriers to entry for a competing Association. If these amendments are adopted, a number of firms with similar business models and substantial off-exchange volume could contemplate Association membership concurrently. This may provide the incentive to create and tailor a new Association to specific business models of these firms. If a competing Association limited the scope of its members or operations, it might not have to duplicate all of the surveillance and supervision functions required to be provided by an Association that does not have those limits. This may lower the costs of forming an Association and alter the barriers to entry.[199]

The existence of multiple Associations might provide benefits to the market as a whole. If a new Association could provide high quality services to members with a lower fee structure, all Associations would have incentives to reduce fees to attract members. This could result in cost savings to broker-dealers. Second, a new Association could innovate to develop different surveillance and supervision methods that could be more efficient than FINRA's methods.

Competition among Associations could also entail substantial costs. If a new Association were to form, the necessary regulatory infrastructure including Information Technology (''IT'') systems and personnel would need to be duplicated in the new Association. If the market for Associations is characterized by economies of scale, aggregate costs for the same level of regulation would be higher in a market with two Associations than in a market with a single Association. These additional costs would ultimately be borne by Associations' broker-dealer members. Second, Associations might compete on the basis of providing ''light touch'' regulation, in essence surveiling less and providing less supervision. As a result, the quality of market supervision might decrease, although the Commission does itself oversee self-regulatory organizations, such as Associations, and accordingly, would not permit a ''race to the bottom.'' [200]

C. Consideration of Costs and Benefits

This section discusses costs and benefits of the proposed amendments. While the Commission has attempted, where possible, to provide estimated quantifiable ranges, both costs and benefits are difficult to quantify for this proposal for a number of reasons. First, market participants are heterogeneous in their type, existing exchange memberships, and activity level in the off-exchange market. Consequently, compliance costs will vary across firms in a number of dimensions. Second, estimating costs is complicated by the fact that Non-Member Firms can comply with the proposal in a number of ways, and presumably each will choose to seek compliance in the manner that minimizes the sum of its direct costs (related to joining and maintaining memberships in additional SROs) and indirect costs (which include forgone opportunities to trade profitably and costs associated with revising business strategies). Furthermore, some firms are likely to remain exempt upon adoption of the proposed amendments, but the Commission lacks data to identify those firms with certainty.[201] At the other end of the spectrum, the minority of Non-Member Firms that are large and contribute significantly to both exchange and off-exchange trading are unlikely to remain exempt.[202] For the 14 large firms that connect directly to ATSs, the Commission believes that all will lose their exempt status, but cannot predict how those firms will seek to comply with the proposed amendments. The Commission is unable to more precisely quantify the number of Non-Member Firms that will lose their exemption from Association membership upon adoption of the proposed amendments because it is unable to estimate the level of off-exchange trading for the majority of the 125 Non-Member Firms. OATS reporting rules do not require Member Firms to disclose the identities of broker-dealers that submit orders to a Member Firm, making it infeasible to more precisely estimate non-ATS off-exchange trading for Non-Member Firms.

Quantifying costs is further complicated because Non-Member Firms do not report order audit trail data. It is difficult to measure the trading of individual firms, although their activity as a group is observable within audit trail data. Consequently, the Commission can measure the approximate overall contribution of Non-Member Firms to off-exchange volume, but cannot fully partition that volume across Non-Member Firms.

Some firms with substantial off-exchange trading activity may choose to change their business models rather than join an Association. If such firms ceased off-exchange activity, they would remain outside the supervision of an Association, and their decision to change business models may affect market quality both on and off-exchange. The Commission does not have ready access to statistics on the liquidity provision of Non-Member Firms on and off exchanges. As such, the Commission cannot quantify the potential changes in transaction costs, even under broad assumptions about how Non-Member Firms will change their business models. This is discussed further in Section V.B.2.

The overall benefits of the proposed amendments relate to more comprehensive and uniform surveillance of off-exchange activity by the regulator best positioned to oversee such activity. The benefits the Commission anticipates from the amendments are largely qualitative and by their nature difficult to measure.

1. Benefits

As discussed above,[203] some of the firms using the existing Rule 15b9–1 exemption are significant participants in overall off-exchange market volume. Thus, a substantial share of off-exchange volume is conducted outside of the regulatory jurisdiction of an Association that has primary responsibility for overseeing off-exchange activity.

[199] Some limitations on Association membership or operations would require exemptive relief for the Association to register with the Commission.

[200] *See* Section 19(g) and Section 19(h) of the Exchange Act.

[201] Non-Member Firms that provide liquidity on multiple exchanges and trade heavily off-exchange are unlikely to be small in terms of net capital, and are not low trading volume firms by definition. However, as discussed in Section V.A.1, many Non-Member Firms are small in terms of net capital and may be members of a single exchange. Such firms are more likely to have a floor-brokerage business model, or have limited exposure to off-exchange markets. Such firms would either be exempt from the rule by virtue of having no off-exchange trading or no trading on exchanges of which they are not members, or be able to rely on the floor member hedging exemption to continue their limited off-exchange trading related to floor brokerage activities.

[202] The diversity of Non-Member Firms is discussed in Section V.A.1.

[203] *See* Section I.

Association membership would supplement the oversight of the exchanges, which typically do not examine the off-exchange activity of their members. This would further assist the Commission in obtaining a more complete picture of the activity that occurs on ATSs and elsewhere in the off-exchange market by entities that are not currently members of an Association. Investors and intermediaries benefit when a specialized expert regulates and oversees the off-exchange market.[204] Investors participating in the off-exchange market currently do not fully realize the benefits of such expertise and regulatory oversight.

As discussed above,[205] the Commission preliminarily believes the inclusion of more Non-Member Firms in an Association would improve such Association's ability to supervise cross-exchange trading activity. This would enhance regulators' ability and—through the information FINRA shares with the Commission—the Commission's ability to effectively oversee regulation of trading on multiple markets and of financial products.

The Commission also preliminarily believes that the proposed amendments to Rule 15b9–1 would improve supervision of Non-Member Firms. FINRA, currently the only Association, has substantial experience and expertise from overseeing a large number of broker-dealers. This makes FINRA's potential regulation of Non-Member Firms with off-exchange or cross-market trading activity particularly efficient.

The Commission preliminarily believes that this proposal provides significant benefits even in the event that the Commission approves the CAT NMS Plan.[206] The CAT eventually may address the regulatory audit trail data deficiencies discussed previously,[207] but the CAT will not address FINRA's lack of jurisdiction over Non-Member Firms participating in the off-exchange markets, which FINRA is charged with overseeing, and the need for that enhanced oversight.

While current members of an Association would not be directly affected by this rule, they would benefit by having a more level playing field in terms of their regulatory requirements relative to Non-Member Firms. Currently, competition in liquidity provision in equity markets is distorted by inequalities in regulatory requirements.[208] With more uniform regulatory requirements and oversight, firms may compete more equitably to supply liquidity both on exchanges and off-exchange.

2. Costs

The proposed amendments, by narrowing the existing exemption, would result in broker-dealers that no longer qualify for the exemption having to comply with Section 15(b)(8) by either limiting their trading to exchanges of which they are members or joining an Association. Under the proposed amendments, therefore, Non-Member Firms that choose to continue any off-exchange activity will be faced with choices that would involve corresponding costs. For example, Non-Member Firms may incur costs related to membership in an Association or costs necessitated by additional exchange memberships. Additionally, some Non-Member Firms may incur the costs of losing the benefits of trading in the off-exchange market if they decide not to join an Association.

Most of the costs incurred in joining an Association and maintaining membership therein are dependent on firm characteristics and activity level. Furthermore, the Commission believes that some Non-Member Firms may comply by ceasing their off-exchange trading activity, avoiding many of these costs but forgoing the opportunity to trade profitably in some venues. With certain assumptions, the Commission has attempted to estimate direct compliance costs that a Non-Member Firm is likely to face to comply with the proposed amendments. The estimate applies to the 14 Non-Member Firms that connect directly to ATSs; smaller firms that choose to join an Association should face lower costs because they have less revenue and trading volume that would be subject to GIA, TAF and Section 3 fees. The 14 Non-Member Firms that connect directly to ATSs, assuming that trading volumes and gross income levels remain unchanged, would face implementation costs of approximately $3.3 million per firm, with ongoing annual costs ranging from about $2.3 million to $23 million depending on the firms' off-exchange trading volume.[209] Cost estimates (one time and annual) are broken down in the following tables and are discussed in detail below:

TABLE 1—MEDIAN OR AVERAGE FIRM IMPLEMENTATION COSTS

Cost	Median or average[210]
Application to join FINRA	$7,500
Implement OATS reporting ...	3,160,000
Legal consulting	82,500
Total	3,250,000

TABLE 2—MEDIAN OR AVERAGE FIRM ONGOING ANNUAL COSTS[211]

Cost	Median or average
OATS reporting	$2,280,300
Gross Income Assessment ..	113,000
Trading Activity Fee	40,000
Personnel Assessment	0
Section 3 fee	212,000
Compliance work	60,000
Total	2,705,300

If all 14 of those Non-Member Firms that connect directly to ATSs were to

[204] The off-exchange market is diverse and less transparent than exchanges. An exchange typically has a single matching engine for a given security and a limited number of order types that interact to create transactions while disseminating quote information publicly. The off-exchange market encompasses over 40 ATS matching engines while more than half of off-exchange volume occurs outside of ATSs with transactions reported by more than 200 market participants. Only a few of these ATS venues disseminate quote information. Surveillance and oversight of the off-exchange market requires proprietary data from thousands of market participants, and regulatory personnel with knowledge of the institutional detail of the workings of dozens of trading venues. At present, only FINRA possesses those resources. Further detail on off-exchange market trading is provided by Tuttle, Laura, 2014, Over-the-Counter Trading: Description of Non-ATS OTC Trading in National Market System Stocks, *available at http://www.sec.gov/dera/staff-papers/white-papers/otc-trading-white-paper-03-2014.pdf.*

[205] *See supra* Section I.B.

[206] *See* CAT Release, *supra* note 86.

[207] *See supra* note 170.

[208] *See* Section V.B.3.

[209] The largest contributor to the estimate of implementation and ongoing costs is the cost of OATS reporting. Estimates for OATS reporting costs are taken from the CAT NMS Plan and relate to implementing CAT reporting, which is expected to be more complex and have more stringent requirements related to technology, such as more stringent clock synchronization, than OATS reporting requires. Consequently, the Commission believes these likely are overestimates of actual costs firms will face to implement OATS reporting. *See infra* note 221 for further information on CAT NMS Plan cost estimates. Each of the 14 firms is assumed to have implementation costs of $3,160,000 to initiate OATS reporting, $82,500 in legal consulting costs, and an application fee ranging from $7,500 to $12,500 depending on the number of registered persons. The Commission derived these estimates from the CAT NMS Plan. *See infra* note 221 and accompanying text for qualifiers on these estimates.

[210] Medians are used where possible. For OATS-related costs, median values are zero, so averages are used. This data is discussed further in note 219, *infra.* Cost estimates are reported as ranges for legal consulting and compliance work; for these estimates, the midpoint is used.

[211] TAF is underestimated because it accounts for only ATS volume. *See infra* note 231 and accompanying text. This TAF cost also represents a transfer from current Non-Member Firms to

Continued

join FINRA, the aggregate cost of the proposal for these firms would be $42.5 million in implementation costs and ongoing aggregate annual costs of $85.2 million, with the majority of the costs related to implementing OATS reporting.[212] While the Commission is unable to aggregate the costs of the proposal for the remaining 111 firms, the Commission believes that the aggregate costs for the subset of 14 represent the majority of the aggregate costs, even assuming that all 125 firms will join FINRA.[213]

a. Costs of Joining an Association [214]

Based on discussions with FINRA, currently the only Association, and industry participants, the Commission preliminarily believes that the direct compliance costs on Non-Member Firms of joining FINRA are composed of the FINRA membership application fees, costs associated with adapting IT infrastructure for regulatory data reporting requirements, and any legal or consulting costs necessary for effectively completing the application to be a member of FINRA (*e.g.,* ensuring compliance with FINRA rules including drafting policies and procedures as may be required).

The fees associated with a FINRA membership application can vary. As an initial matter, the application fee to join FINRA is tier-based according to the number of registered persons associated with the applicant. This one-time application fee ranges from $7,500 to $55,000.[215] The initial membership fee for FINRA is $7,500 for firms with ten or fewer representatives registered with FINRA and $12,500 for firms with eleven to one hundred representatives registered with FINRA.[216] Based on its knowledge of the size and business models of Non-Member Firms, the Commission preliminarily believes that most Non-Member Firms would not incur FINRA application fees exceeding $12,500.[217]

Because most FINRA members have OATS reporting obligations, Non-Member Firms that choose to join FINRA will incur costs related to initiating and maintaining data reporting.[218] Costs to initiate and maintain OATS reporting [219] will vary widely among firms, depending on many factors including current IT infrastructure, complexity, and affiliation with a firm that already reports OATS data. While we are unable to quantify these costs precisely, one point of reference for the possible costs associated with OATS reporting obligations is the CAT NMS Plan, that provides estimates of these costs for reporting CAT data. There are limitations, however, to those estimates in this context in that CAT is an order audit system that will be significantly more complex and larger in scope than OATS.[220] Because the projected scope of CAT exceeds substantially the scope of OATS reporting, and implementation of CAT reporting is expected to include technical requirements such as more stringent clock synchronization requirements than OATS, the Commission believes these estimates provide (at best) an upper-bound for OATS reporting costs. Furthermore, Non-Member Firms that are members of NASDAQ or NYSE are already required to produce OATS data and report it to FINRA upon request. Consequently, implementation costs likely overstate the costs these firms would face in initiating OATS reporting because the Non-Member Firms may have already established some of the necessary infrastructure. In addition, the Commission recognizes that the CAT NMS Plan estimates are based on voluntary survey responses by a small number of broker-dealers. Finally, the CAT NMS Plan has not yet been published for comment. Nevertheless, the Commission believes that those estimates give a sense of the potential magnitude of initiating OATS reporting.

The CAT NMS Plan details cost estimates for two types of broker-dealers. The first type already reports OATS data; the second type does not. The Commission focuses on costs for large firms that do not currently report OATS data. In these estimates, the average large firm estimated CAT implementation costs are approximately $3,160,000; average implementation costs for a small firm are estimated at approximately $131,200. The average large firm estimated annual CAT reporting costs are $3,160,000 annually; average small firm reporting costs are $121,200.[221] As discussed previously, these are, at best, upper-bounds on OATS reporting costs because of differences in complexity and technical requirements for OATS and CAT reporting.

In addition to the application fees and data reporting costs, the Commission has taken into account the cost of legal and other advising necessary for effectively completing the application to

current Member Firms. The Section 3 fee estimate assumes that the firms currently pay no Section 3 fees. It is likely that firms that clear through a Member Firm are currently assessed these fees indirectly.

[212] *See supra* note 209 and *infra* note 221 related to OATS reporting costs derived from the CAT NMS Plan. The total cost calculation assumes range midpoint costs for FINRA application, legal consulting, and compliance work, as well as maximum costs for implementation of OATS reporting. GIA, TAF, and Section 3 fees are calculated using firm share and dollar volume activity estimates from FINRA data discussed further in Section V.A.1.

[213] The data provided to the Commission by FINRA describes the aggregate ATS activity level of all 125 Non-Member firms. Further firm-level data for the 14 firms that directly connect to ATSs can be inferred using exchange MPIDs that are reported by some ATSs. Because these 14 direct-connecting firms account for the majority of Non-Member Firm ATS activity, the Commission believes that the 111 remaining firms have much lower ATS (and presumably other off-exchange) activity levels. Since transacted volume is the primary driver of the variation in costs across firms that join FINRA, the Commission believes that the remaining 111 firms will face far lower costs if they choose to join FINRA.

[214] The Commission recognizes that Non-Member Firms would incur compliance costs on an initial and ongoing basis to comply with the proposed amendments. *See* Section V.C.2.a. The Commission does not aggregate these costs across all Non-Member Firms because the Commission does not have necessary information about the majority of the Non-Member Firms and expects that costs would vary widely across firms. Where possible, however, the Commission has provided estimates based on a subset of large firms on which the Commission has sufficient information. The Commission expects that smaller firms likely will face lower costs.

[215] *See* FINRA By-Laws, Schedule A, Section 4.

[216] *Id.*

[217] Based on current FOCUS data, the Commission believes no Non-Member Firm has more than 100 registered representatives.

[218] *See* FINRA Rule 7400 Series—Order Audit Trail System.

[219] Pursuant to Rule 613 under the Exchange Act, the SROs have submitted a plan to eliminate existing rules and systems that will be rendered duplicative by the CAT. 17 CFR 242.613(a)(1)(ix). To the extent that OATS is rendered duplicative by CAT, the CAT NMS Plan proposes its elimination, and the Commission approves the CAT NMS Plan, the OATS system may eventually be eliminated. If this occurs, the costs of OATS reporting to Non-Member Firms may cease, but may be supplanted by other costs related to order and transaction reporting requirements under the CAT NMS Plan.

[220] The CAT NMS Plan proposal discusses OATS reporting requirement. These requirements include having revenue of less than two million dollars. The Commission believes that large Non-Member Firms would not qualify for OATS reporting exemptions, were the Commission to approve the CAT NMS Plan as submitted on February 27, 2015. *See* CAT NMS Plan, *available at http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p602500.pdf.*

[221] Costs estimates are the sum of hardware/software costs, full time employee costs, and third party/outsourcing costs for firms that do not currently report to OATS. Within these firms, median implementation and annual ongoing costs were estimated at zero. The CAT NMS plan discusses interpretation of the zero medians, saying ''It is the participants' understanding that this is likely due to current operational practices among broker-dealers that do not differentiate between technology and headcount costs that support business functionality and regulatory reporting.'' Consequently, the Commission believes these estimates do not reflect the opportunity costs associated with assigning employees to regulatory reporting tasks instead of other tasks they could be performing. *See* the amended CAT NMS Plan, *available at http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p602500.pdf.*

be a member of FINRA. Some firms may choose to perform this legal work internally while others may use outside counsel for the initial membership application. In making this choice, Non-Member Firms will likely take into account factors, such as the size and resources of the firm, the complexity of the firm's business model, and whether the firm previously used outside counsel to register with any exchanges. Based on conversations with industry participants that assist with FINRA membership, for Non-Member Firms that choose to employ outside counsel to assist with their FINRA membership application, the cost of such counseling ranges from approximately $40,000 to $125,000. Factors affecting the specific costs of a particular firm include the number of associated persons, the level of complexity or uniqueness of the firm's business plan, and whether the firm has previously completed exchange membership applications with similar requirements.

b. Costs of Maintaining an Association Membership

With respect to ongoing costs, the Commission preliminarily believes that the three components of such costs are any ongoing fees associated with FINRA membership, costs of legal work relating to FINRA membership, and costs associated with additional compliance activities.

The ongoing membership related fees associated with FINRA membership include the annual gross income assessment; the annual personnel assessment; and the TAF and Section 3 fees, among others. The more significant fees are discussed below.[222]

The annual Gross Income Assessment generally requires members to pay a percentage of the Member Firm's total annual revenue based on a graduated scale.[223] The magnitude of the annual Gross Income Assessment is based on the total annual revenue, excluding commodities income, reported by the Member Firm on its FOCUS Form Part II or IIA.[224] Based on FOCUS Form data from Non-Member Firms in 2014, the Commission has determined that the average annual total revenue of Non-Member Firms, excluding commodities income, is approximately $93 million, with a median of $86 million.[225] For the 14 large firms that connect directly to ATSs, FINRA's graduated Gross Income Assessment scale results in an average Gross Income Assessment for these Non-Member Firms of $91,784 and a median Gross Income Assessment of $113,824.[226]

The magnitude of the TAF depends on the transaction volume of a FINRA member that is covered by TAF as described in the FINRA Bylaws.[227] The Commission notes that FINRA may need to consider reevaluating the structure of the TAF to assure that it appropriately takes into account the business models of Non-Member Firms that may join FINRA as a result of the proposed amendments.[228] Although the Commission lacks the data to comprehensively estimate TAF that Non-Member Firms are likely to incur, data on ATS trading during the fourth quarter of 2014 provided by FINRA allows the Commission to estimate the fees associated with ATS activity for Non-Member Firms that connect directly to an ATS.[229] The Commission has identified 14 Non-Member Firms that traded on ATSs directly without the intermediation of a Member Firm during the fourth quarter of 2014.[230] The Commission estimates that trading activity fees incurred by these 14 large Non-Member Firms due to their ATS activity would range from $0 to approximately $3.2 million annually, with a median incurred TAF of around $40,000.[231] The Commission believes that TAF for Non-Member Firms not among the 14 identified will be far lower because the median Non-Member Firm has far lower trading volume than the typical firm of the 14 identified in the data.

Some off-exchange trading that Non-Member Firms engage in currently may no longer be profitable when TAF is incurred. Consequently, Non-Member Firms may reduce their trading both on exchanges and off-exchange after joining an Association.

In addition to TAF, Non-Member Firms that choose to join FINRA may incur additional Section 3 fees. Using data on ATS trading during the fourth quarter of 2014 provided by FINRA, the Commission estimates that Section 3 fees incurred by the 14 large Non-Member Firms due to their off-exchange

[222] There are additional fees associated with maintaining an Association membership. There is an annual Personnel Assessment fee ranging from $130 to $150 per employee that applies to principals or representatives in the FINRA member's organization. *See* FINRA By-Laws, Schedule A, Section 1(e). Based on 2014 FOCUS reports, the number of registered representatives of Non-Member Firms that connect directly to ATSs ranges from 0–91, with an average of 18 and a median of 0. The Commission estimates that the average Non-Member Firm would incur a Personnel Assessment fee of no more than $2,520, and the median Non-Member Firm would incur a Personnel Assessment fee of $0. The Commission further estimates that the maximum Personnel Assessment fee that one of these Non-Member Firms would incur would be $11,830. There are also additional continuing education and testing requirements which will impose costs upon firms joining an Association. Additionally, there are *de minimis* fees (branch registration fee and system processing fee, among others). *See* FINRA By-Laws, Schedule A.

[223] *Id.* For example, FINRA imposes a Gross Income Assessment as follows: (1) $1,200 on a Member Firm's annual gross revenue up to $1 million; (2) a charge of 0.1215% on a Member Firm's annual gross revenue between $1 million and $25 million; (3) a charge of 0.2599% on a Member Firm's annual gross revenue between $25 million and $50 million; and so on as provided in Schedule A. When a firm's annual gross revenue exceeds $25 million, the maximum of current year's revenue and average of the last three years' revenue is used as the basis for the income assessment. *Id.*

[224] *See* FINRA By-Laws, Schedule A, Section 2. *See also* FOCUS Report Form X–17A–5, Part II and IIA.

[225] Based on 2012–2014 FOCUS data.

[226] ($1,200 for the first $1 million of revenue) + (0.1215% × annual revenue greater than $1 million up to $25 million) + (0.2599% × annual revenue greater than $25 million up to $50 million) + (0.0518% of annual revenue greater than $50 million up top $100 million) + (0.0365% of annual revenue greater than $100 million to $5 billion). As discussed previously, Non-Member Firms vary in size. GIA for large firms used in these calculations (the 14 that connect directly to ATSs), is anticipated to be far larger than for the 111 remaining Non-Member Firms. *See* FINRA By-Laws, Schedule A, Section 1(c).

[227] *See* FINRA By-Laws, Schedule A, Section 1(b).

[228] *See supra* notes 95 and 184.

[229] Some Non-Member Firms may trade on ATSs indirectly using the services of a Member Firm. The Commission cannot identify the magnitude of these firms' trading on an individual basis because Non-Member Firms are not required to be identified in Member Firms' OATS data. The Commission thus cannot estimate the TAF that these firms would incur as FINRA members.

[230] These 14 firms do not represent typical Non-Member Firms: they represent the largest of the Non-Member Firms in terms of trading volume. Consequently, the median TAF discussed here far exceeds what the majority of Non-Member Firms would pay if they were to join FINRA.

[231] Estimated TAF does not include any TAF related to firm's exchange-based trading activity, or off-exchange activity that occurs outside of an ATS. If a firm's activity on an exchange is related to normal market making operations, the activity does not incur TAF. The Commission is unable to estimate the proportion of these firms' exchange trading that would incur TAF because the Commission does not have information on what proportion of Non-Member Firm exchange activity would qualify for exemption from TAF fees under FINRA By-Laws. Because other elements of the TAF are not included in this calculation, it underestimates the actual TAF that firms would incur if they joined FINRA. The magnitude of the underestimation may be significant, but firms that join FINRA may be able to reduce their TAF cost by registering as Market Makers upon additional exchanges. (TAF is not assessed for certain trades related to registered market-making. *See* FINRA By Laws, Schedule A, Section (1)(b)(2)(F).) Estimates of TAF are based on the percentage of ATS orders received by Member Firms that operate an ATS and report the exchange-issued MPIDs of Non-Member Firms that place orders within that system. The calculation assumes that these proportions are representative of the trading of Non-Member Firms on all ATSs, and that the orders placed by these firms are equally likely to be executed within ATSs. It also assumes that half of all executed volume is sell volume, which incurs a TAF. The estimated TAF is equal to estimated sell volume × $0.000119. The $0 minimum is associated with a firm that has almost no ATS volume.

trading would range from $0 to approximately $16.9 million dollars annually, with a median incurred Section 3 fee[232] of $212,000.[233] As discussed in Section V.A.2 above, some of these fees may already be paid by Non-Member Firms that engage the services of a Member Firm clearing broker. However, FINRA lacks the authority to assess Section 3 fees against Non-Member Firms that self-clear, in which case FINRA may assess the fee to the Member Firm counterparty to the transaction. While these fees will represent a cost to Non-Member Firms, the cost will be largely offset to the industry as a whole by a reduction of Section 3 fees incurred by Member Firms (or clearing brokers acting on behalf of a Member Firm) when they buy from a self-clearing, Non-Member Firm.

Ongoing compliance costs would depend on the business circumstances of each firm and the types of issues that could arise. As in the case of the initial membership, some Non-Member Firms may choose to conduct ongoing compliance activities other than regulatory data reporting work (such as core accounting functions, updating policies and procedures, and updating forms filed with regulators) in-house while others may seek to outsource this work. The Commission estimates, based on discussions with industry participants, that the ongoing compliance cost for firms that outsource this work will range from $24,000 to $96,000 per year.[234] In the case of some Non-Member Firms, *i.e.,* those that are affiliates of FINRA members, this cost is likely to be lower as they may be able to leverage compliance work already being performed.

In addition to the cost estimates discussed above, the Commission recognizes that both Non-Member Firms and SROs will incur other direct and indirect costs because of the increased regulatory requirements of the proposed amendments. Specifically, there will be compliance costs associated with regulation by FINRA.[235] Generally, the SROs that supervise Non-Member Firms are unable to provide the level of supervision of cross-market and off-exchange activity that FINRA provides to its Member Firms. Consequently, firms that join an Association will face costs associated with greater regulatory scrutiny, including the costs of comprehensive examinations of activity that was previously subject to less regulatory review. To the extent that this activity is permissible under Association rules, additional costs will be limited to those activities that are required to accommodate normal supervision and examination by an Association. To the extent that their activity does not already do so, firms will face additional costs related to bringing activity into compliance with Association rules. For the reasons discussed above, the Commission is not able to estimate these costs, although the Commission believes they will vary among Non-Member Firms.

c. Costs of Joining Additional Exchanges Under the Rule as Proposed To Be Amended

Non-Member Firms must be members of all exchanges upon which they transact business if they decide not to join an Association. With limited exceptions for some excluded activity previously discussed, some Non-Member Firms may choose to join additional exchanges to be excluded from the requirement to become a member of an Association. Alternatively, these firms may cease trading on exchanges of which they are not members.

Based on discussions with FINRA and industry participants, the Commission understands that completing a membership application with an additional exchange is generally less complicated and time consuming than completing a membership application with FINRA. Consequently, the Commission preliminarily believes that the compliance burden on Non-Member Firms for joining an additional exchange is likely to be significantly less than that of joining FINRA as those Non-Member Firms that choose to join an additional exchange are likely able to perform this work internally, given that they are already members of at least one exchange, and that such work should take less time than the time required to complete an application with FINRA.

In addition to the legal burden, Non-Member Firms joining additional exchanges as a result of the proposed amendments would incur membership and related fees. To the extent that Non-Member Firms choose to become members of additional exchanges, the fees associated with such memberships would vary depending on the type of access sought and the exchanges of which Non-Member Firms choose to become members.

The Commission also believes that the exchange membership fees that would apply to Non-Member Firms joining such exchanges would be those fees that apply to either introducing broker-dealers or proprietary trading firms. This assumption is consistent with the fact that any broker-dealers carrying customer accounts could not qualify for the current exemption of Rule 15b9–1. Thus, any exchange membership fees that apply to firms that provide clearing services or conduct a public business would not apply to Non-Member Firms.

Furthermore, because all Non-Member Firms are members of at least one exchange,[236] they would have already completed a Form U4, to register associated persons.[237] Although FINRA's rules regarding registration of associated persons tend to be more specific than exchange SRO rules regarding associated persons, the Commission believes Non-Member Firms will not need to register additional associated persons because the exchange SRO rules are already comprehensive in this regard. The Commission understands that all exchanges can access the Form U4 filings within the CRD which is maintained by FINRA.

In order to obtain estimates of the cost of joining additional exchanges, the Commission reviewed the membership

[232] These estimates do not include fees related to off-exchange trading outside of an ATS; the Commission is unable to estimate the magnitude of such fees that Non-Member Firms would incur if they were to continue trading off-exchange upon adoption of these amendments because in the absence of a consolidated audit trail, the Commission lacks data on Non-Member Firm off-exchange activity outside of ATSs.

[233] Section 3 fees are estimated using Non-Member Firm off-exchange dollar volume reported by FINRA. Half of volume is assumed to be sell volume that would be subject to Section 3 fees. Aggregate estimated sell volume is estimated across firms by assuming that all non-member orders are equally likely to generate executions. For example, assume firm ABC submitted 10% of all off-exchange orders submitted by Non-Member Firms. Section 3 Fee obligation is calculated as: Non-Member Firm Dollar Volume × ½ × 10% × $18.40/$1,000,000.

[234] For firms that choose to do this work in-house, the Commission preliminarily believes that the costs of ongoing compliance may be less than $96,000. This figure assumes Non-Member Firms may have experience in ongoing compliance work with SROs through their exchange membership(s) and, therefore, only captures the incremental cost of compliance with Association rules.

[235] However, Non-Member Firms that choose to join an Association may have FINRA assigned as their DEA. Such an assignment could eliminate separate DEA fees that the Non-Member Firms may pay to their current DEA.

[236] For a broker-dealer to possibly be exempt from the requirement to be an Association member currently or under the proposed amendments, the broker-dealer must be a member of at least one exchange.

[237] Form U4 is the Uniform Application for Securities Industry Registration or Transfer. Representatives of broker-dealers, investment advisers, or issuers of securities use Form U4 to become registered in the appropriate jurisdictions and/or with SROs. The Commission understands that all SROs currently use Form U4. *See, e.g.,* BATS Rule 2.5.01(c), ISE Rule 304(b), Phlx Rule 600(b).

related fee structures of all eighteen national securities exchanges. In assuming that the potential burden of joining additional exchanges would likely be less than that of joining FINRA, the Commission assumes that the costs imposed on Non-Member Firms by the proposed amendments would be membership fees, not costs relating to trading, such as trading permit fees and connectivity. The Commission recognizes that membership in an exchange, alone, may not guarantee the ability to trade because many exchanges charge fees for trading rights, ports, various degrees of connectivity, and floor access and equipment, should those be desired. The Commission believes that the fees associated with trading on an exchange are not the result of the proposed amendments because, under the proposed amendments, a Non-Member Firm could continue to trade through another broker-dealer on an exchange as long as that Non-Member Firm is a member of every exchange on which it trades or is a member of FINRA. In other words, the proposed amendments themselves do not impose the cost of connectivity and related fees, but only the costs associated with membership on exchanges on which Non-Member Firms will trade. To the extent, therefore, that Non-Member Firms continue to trade through other broker-dealers in a manner consistent with how they currently operate, the proposed amendments impose only the costs associated with membership.

The Commission also recognizes that connectivity fees to additional exchanges can range from the very low—approximately $500 a month for a workstation at NASDAQ—to upwards of $100,000 monthly, depending on factors such as latency, distance, bandwidth, and co-location, among others. Again, however, these costs are not a result of the proposed amendments because the proposed amendments do not impose any connectivity requirements. They simply impose membership requirements to facilitate regulatory supervision.

To arrive at preliminary estimates of the cost of joining additional exchanges, the Commission aggregated any fees associated with a firm's initial application to an exchange (''initial fee'') and separately aggregated the fees associated with any monthly or annual membership costs to obtain a separate annual cost (''annual fee''). Based on these aggregations, the Commission obtained a preliminary range for both the initial fee and the annual fee across exchanges. The initial fee is as low as $0 for some exchanges. Most exchanges have an initial fee that is greater than $0 and no more than $5,000.[238]

Regarding monthly or annual membership fees, most exchanges' ongoing monthly or annual membership fees generally range from $1,500 to $7,200.[239] Again, these ongoing exchange membership costs are generally lower than the annual costs estimated for being a member of FINRA.

d. Policies and Procedures Related to the Hedging Exemption

Non-Member Firms that choose not to join an Association but wish to continue to trade off-exchange (or on exchanges of which they are not members) must do so in a manner that conforms to the hedging exemption. To do so, the proposal would require Non-Member Firms to establish, maintain and enforce policies and procedures as discussed above. The Commission estimates that firms will incur a burden of 16 hours in initially preparing these policies and procedures.[240] Furthermore, the burden of maintaining and enforcing such policies and procedures, including a review of such policies at least annually, would be approximately 96 hours.[241] The Commission estimates an initial implementation cost of approximately $5,000 and an annual ongoing cost of approximately $18,000 for Non-Member Firms that wish to utilize the hedging exemption and perform this work internally; for firms that outsource this work, costs are likely to be higher.[242] For firms that choose to join FINRA, the hedging exemption is not relevant. They will not incur these costs.

e. Indirect Costs

In addition to possibly incurring costs related to joining exchanges, Non-Member Firms that choose not to join an Association will lose the benefits of trading in the off-exchange market, unless they meet the exemption for hedging. As mentioned above, Non-Member Firms are significant participants in ATS activity. Much of this trading is attributed to 14 Non-Member Firms, and the activity level across those firms varies widely. Assuming that order volume is proportional to trade volume, the

[238] The BATS Exchanges do not assess any initial fees. *See* BATS BYX Exchange Fee Schedule, *available at http://www.batstrading.com/support/fee_schedule/byx/* (last visited February 18, 2015) (omitting any mention of an initial membership fee); BATS BZX Exchange Fee Schedule, *available at http://www.batstrading.com/support/fee_schedule/bzx/* (last visited February 18, 2015) (same); BATS EDGA Exchange Fee Schedule, *available at http://www.batstrading.com/support/fee_schedule/edga/* (last visited February 18, 2015) (same); BATS EDGX Exchange Fee Schedule, *available at http://www.batstrading.com/support/fee_schedule/edgx/* (last visited February 18, 2015) (same).

Other exchanges do have initial application fees. *See, e.g.,* ISE Fee Schedule at 19, *available at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf* (last visited February 18, 2015) (assessing a one-time application fee of $3,500 for an ''Electronic Access Member''); application for NYSE and NYSE MKT Equity Membership for Non-FINRA Members at 2, *available at http://usequities.nyx.com/sites/usequities.nyx.com/files/nyse__mkt_equity_membership_application_for_non-finra_members.pdf* (last visited February 18, 2015) (discussing the Non-Public Firm Application Fee of $2,500); NASDAQ Price List, *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (last visited February 18, 2015) (discussing the NASDAQ Application Fee of $2,000); CBOE Fee Schedule at 10, *available at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* (last visited February 18, 2015) (typically assessing a trading permit holder organization application fee on all of its members of $5,000). If a firm is organized as a sole proprietorship, the application fee for CBOE is only $3,000. *Id. See also* CBOE TPH Organization Application Timeline and Needs List, *available at https://www.cboe.org/publish/TPHForms/TPHOrganizationApplicationTimelineandNeeds.pdf* (last visited February 18, 2015).

[239] *See, e.g.,* BATS BYX Exchange Fee Schedule, *available at http://www.batstrading.com/support/fee_schedule/byx/* (last visited February 18, 2015) (noting an annual membership fee of $2,500); BATS EDGA Exchange Fee Schedule, *http://www.batstrading.com/support/fee_schedule/edga/* (last visited February 18, 2015) (same); CHX Fee Schedule at 3, *available at http://www.chx.com/_literature_119763/CHX_Fee_Schedule* (last visited February 18, 2015) (assessing an annual membership fee of $7,200); MIAX Fee Schedule at 9, *available at http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_02012015.pdf* (last visited February 18, 2015) (assessing a monthly trading permit fee for an ''Electronic Exchange Member'' of $1,500).

[240] This figure is based on the following: (Compliance Manager at 10 hours) + (Compliance Attorney at 5 hours) + (Director of Compliance at 1 hour) = 16 burden hours per dealer. *See infra* note 271. As is discussed in more detail in the Paperwork Reduction Act discussion, the Commission based this estimate on the estimated burdens imposed by other rules applicable to broker-dealers, such as Regulation SHO. However, the Commission preliminarily believes that the policies and procedures under the proposed floor member hedging exemption will be substantially less burdensome than those required by the Amendments to Regulation SHO because those policies and procedures require certain technology and real-time monitoring components. In contrast, the policies and procedures under the proposed amendments to Rule 15b9–1 do not involve a real-time monitoring or technology component. *See infra* note 273.

[241] *See* Section VI.D.

[242] For firms that perform this work internally, the initial cost estimate assumes 4 hours of work performed by a Compliance Manager at an hourly rate of $283 and 12 hours performed by Compliance Attorneys at an hourly rate of $334. The annual cost estimate assumes 48 hours of work by Compliance Clerks at an hourly rate of $64, 32 hours by Compliance Attorneys, and 16 hours by Compliance Managers. Hourly salary figure is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Commission estimates that the smallest of the 14 firms executed 11 shares on ATSs during the fourth quarter of 2014.[243] The largest firm executed 13.3 billion shares. The median firm in the group of 14 large Non-Member Firms is estimated to have executed 167.6 million shares. Although these share volumes are large, the Commission does not have adequate data on these firms to estimate the proportion of their trading activity and revenues that occurs on exchanges versus off-exchange. The Commission cannot judge the likelihood of these firms choosing to cease off-exchange activity rather than joining an Association.

Finally, those firms that choose not to join an Association would be limited in their ability to route their own transactions in a manner so as to comply with the requirements of Regulation NMS.[244] Their transactions would have to be routed through a broker-dealer of an exchange of which they are a member, or routed by a broker-dealer only to those exchanges of which they are members. The routing of orders of Non-Member Firms that do not join an Association will be determined by the routing broker-dealer of the exchanges of which they are members. This loss in choice could lead to higher costs for routing and costs associated with increased latency because the exchange's routing broker-dealer may have a telecommunications infrastructure that is inferior to that of the broker-dealer that previously provided connectivity to that exchange to the Non-Member Firm.[245]

D. Alternatives

1. Elimination of the Floor Member Hedging Exemption

Although the proposed amendments would eliminate the exclusion for proprietary trading activity for broker-dealers wishing to continue availing themselves of the exemption from Association membership under Rule 15b9–1, it would maintain a limited exception for hedging of floor-based activity.[246] Currently, Non-Member Firms are able to hedge their floor-based activity through the exclusion for proprietary trading in Rule 15b9–1. The Commission does not have data to estimate the number of Non-Member Firms that use the proprietary trading exemption in this manner, or the dollar-value of trading that they hedge through the exemption.

One alternative considered by the Commission was the elimination of the hedging exemption entirely. Elimination of the floor member hedging exemption would require any firm that wished to hedge through off-exchange transactions to join an Association or become a member of each exchange on which it trades and cease off-exchange trading. This would improve the Association's ability to monitor cross-market hedging activity that was conducted off-exchange. The Commission recognizes, however, that there may be challenges for the Commission, firms, and exchanges in proving compliance with the exemption. For example, some broker-dealers may label activity as hedging activity that is not covered by the exemption. A firm could establish a limited floor-based business and then inadvertently or deliberately claim the hedging exemption covers significant trading off-exchange (and trading on exchange of which the firm is not a member) that did not reduce or otherwise mitigate the risk of its floor-based activity. Further, firms that wish to avail themselves of the hedging exemption will incur costs to establish, maintain and enforce written policies and procedures related to its use.[247] Without the hedging exemption, firms would not incur these costs, but would incur other costs. In particular, without a hedging exemption, floor brokers on some exchanges might find that hedging positions obtained through their normal activity limited to the floor of a single exchange is less cost-effective. For example, a floor broker on an options exchange is currently exempt from FINRA membership if he trades off-exchange under the exclusion for proprietary trading. After entering an options position, the floor broker can enter an offsetting equity position by trading on an exchange of which he is not a member (through a member broker-dealer) or in the off-exchange market. Under the proposed amendments without the hedging exemption, the floor broker would not be able to make such a hedging transaction without joining at least one additional SRO (FINRA or another exchange where he could transact in equities). If participants have less opportunity to hedge their positions, they may be less willing to provide liquidity in their capacity as floor brokers. Therefore, the Commission is proposing a narrow hedging exemption that covers only the activity it intends to exclude.

2. Improve Off-Exchange Supervision Through Action of Other SROs With or Without CAT

The Commission also considered whether an alternative approach to achieving the objectives of the proposed amendments would be to address the limitations in regulatory oversight of off-exchange activity of Non-Member Firms through exchanges that act as their DEAs or all exchanges of which they are members. The Commission preliminarily believes either of these alternatives would frustrate the regulatory structure established by Congress and would be inefficient. As discussed in detail above, exchanges traditionally have not assumed the role of regulating the totality of the trading of their member-broker-dealers, and exchanges are currently not well-positioned to assume that role, in light of the statutory framework and, among other things, their limited access to data and the lack of a proper rule set to regulate off-exchange trading.[248] Exchanges generally do not have as detailed a set of member conduct rules and do not have non-exchange-specific trading rules, thus allowing such broker-dealers and their personnel to conduct business under a less specific regulatory regime than FINRA members.[249] As discussed above, in this context and consistent with the statutory framework, the Commission preliminarily believes that an Association is better suited to regulate off-exchange trading.[250]

With respect to having Non-Member Firms' DEAs assume the regulatory oversight responsibilities, the Commission could require the Non-Member Firm's DEA to oversee the off-exchange activity of the firm. This alternative may offer some benefit in terms of providing efficient supervision. Non-Member Firms' DEAs may have specialized knowledge of Non-Member Firms' businesses and operations that would facilitate efficient supervision of

[243] The composition of the list of Non-Member Firms that are identified in ATS trading data changes across time periods. It is possible that the number of Non-Member Firms trading directly on ATSs is higher than estimated here. Additional Non-Member Firms may access ATSs through Member Firms, which would also exclude them from this analysis.

To address data limitation, the Commission assumes that ATS orders from each of the 14 Non-Member Firms observable in the data are equally likely to be executed.

[244] The exemption related to routing to comply with Regulation NMS is discussed in Section II.E.

[245] Firms in the business of providing connectivity to exchanges are likely to compete on the basis of their technology. The Commission assumes that some firms that do not join FINRA will have some orders (those governed under the Regulation NMS provisions to prevent trade-throughs) routed using technology inferior to the technology of their firm of choice.

[246] The floor member hedging exemption is discussed more fully in Section II.D.

[247] *See* Section V.C.2.d.

[248] *See supra* notes 82–95 and accompanying text.

[249] *See supra* note 75 and accompanying text.

[250] *See supra* notes 82–95 and accompanying text.

their off-exchange activity.[251] Similarly, requiring all SROs to supervise the off-exchange activity of their members might bring certain benefits. First, there might be innovation in surveillance methodology because exchange SROs could need new surveillance systems and procedures tailored to current market structure and practice. Second, this could foster competition among SROs to provide regulatory services, which could lower costs to members.

However, with respect to DEAs, the supervision of trading activity is outside the scope of typical DEA oversight responsibilities [252] and the Commission believes most exchanges contract with FINRA to perform these examinations. Consequently, if exchange SROs were expected to supervise the off-exchange activities of firms assigned to them for DEA examinations, the exchanges would need to acquire the resources to provide this supervision.

Requiring all SROs to supervise their members' off-exchange trading would also entail substantial costs and create inefficiencies. As discussed previously, exchange SROs have not generally supervised their members' activity outside of the markets they operate.[253] As discussed above, FINRA has invested in the technological infrastructure, cooperative agreements with other SROs, and specialized regulatory personnel to provide surveillance and supervision of activity in off-exchange markets.[254] If each of the exchanges were required to supervise the off-exchange activities of some or all of their members, the exchanges each would need to invest in similar regulatory infrastructure. This investment would be costly to the exchanges; presumably these costs would be passed on to exchange members and ultimately the investing public through higher trading costs. In addition, assigning regulatory responsibility to an exchange SRO, which may in turn contract with FINRA to provide those services, would be costly and inefficient. Further, notwithstanding the potential benefits to innovation, the duplication in regulatory oversight would also be duplication in regulatory resources as multiple SROs would surveil the off-exchange trading of some firms. This approach also could be inconsistent with the allocation of regulatory responsibilities contemplated by Section 17(d) of the Exchange Act.[255]

Furthermore, FINRA has adopted rules that govern off-exchange trading, recognizing the complexity and opacity of the off-exchange marketplace. If exchanges were required to supervise the off-exchange activity of their members, exchanges would need to adopt rules that were tailored to the institutional detail of the off-exchange market. This could result in off-exchange trading rules that varied depending on the exchange membership status of individual participants, resulting in inconsistent rules governing the same off-exchange trading activity.

Finally, the Commission has also considered whether the possibility that the exchanges could obtain additional data through the CAT, or through a FINRA rule change if implemented,[256] affects the Commission's preliminary belief that an Association is better suited to regulate off-exchange trading. Although there may thereby be additional data, these changes would not address the underlying statutory scheme and resource issues that make FINRA well-positioned to regulate off-exchange trading.

3. Exchange Membership Alternative

The proposed amendments would, in accordance with Section 15(b)(8), preclude any firm that is not a member of an Association from trading on exchanges of which it is not a member.[257] Further, under the proposed amendments, if a firm becomes a member of an Association, it would not have to become a member of each exchange upon which it trades.[258] The Commission has also considered requiring broker-dealers to become a member of every exchange on which they trade and to become a member of an Association in order to trade off-exchange (''Exchange Membership Alternative''). In other words, under this alternative, becoming a member of an Association would not alone allow firms to trade on exchanges of which they are not members (as would be permitted under the proposed amendments).

In considering the Exchange Membership Alternative, the Commission weighed whether the same issue of off-exchange activity not being subject to effective regulatory oversight that exists when a Non-Member Firm trades off-exchange is present when a Member or Non-Member Firm trades on an exchange of which it is not a member (through a member of that exchange). The Commission preliminarily believes that the proposed amendments adequately address the issue of establishing effective oversight of off-exchange activity and that the more onerous Exchange Membership Alternative would not provide any additional regulatory benefit beyond the proposed amendments for several reasons. First, while exchanges lack the data, surveillance technology and specialized regulatory personnel to surveil their members' trading off-exchange, FINRA has these resources to surveil the activity of Member Firms both on exchanges and off-exchange. Accordingly, requiring Member Firms to also become members of each exchange on which they effect transactions, including indirectly, would be unnecessarily duplicative because FINRA can already surveil the activity of a Member Firm trading on an exchange of which it is not a member. In addition, while exchanges do not have a specialized rule set to govern their members' activity in the off-exchange market, FINRA's rules are consistent with requiring Member Firms to adhere to the trading rules of exchanges on which they transact. If a Member Firm were to violate an exchange rule on an exchange of which it is not a member, FINRA would have the jurisdiction needed to address the resulting violation. Therefore, requiring that the Member Firm also become a member of that exchange would not prevent FINRA from exercising jurisdiction over the matter.

The Commission notes that the Exchange Membership Alternative might require firms to become members of more SROs than required under the proposed amendments, which would impose additional costs. In particular, some Non-Member Firms that would become Member Firms under the Proposal would also need to become members of additional exchanges or cease trading on these exchanges. In addition, some current Member Firms would also need to become members of additional exchanges.

4. Retaining the De Minimis Allowance

The Commission considered retaining the $1,000 *de minimis* allowance for trading other than on an exchange of which the Non-Member Firm is a member. The Commission also considered retaining the $1,000 *de minimis* allowance, but removing the exception for proprietary trading conducted with or through another registered broker-dealer. As discussed

[251] *See* Allston Letter, *supra* note 106.

[252] *See supra* note 164.

[253] *See supra* note 68–69 and accompanying text.

[254] *Id.*

[255] 15 U.S.C. 78q(d).

[256] *See supra* note 84.

[257] The proposed amendments provide limited exemptions for hedging of floor-based activity and order routing to satisfy certain provisions of Regulation NMS.

[258] In order to trade on exchanges of which it is not a member, the firm would have to trade with or through another broker-dealer that is a member of that exchange.

above,[259] the Commission believes that the magnitude of the *de minimis* allowance is no longer economically meaningful. Furthermore, the Commission believes that the commission sharing arrangements discussed previously [260] are rarely if ever used. However, the Commission believes that floor members on some exchanges may rely upon the exception for proprietary trading conducted with or through another registered broker-dealer to hedge risks associated with floor-based activities. Consequently, the proposed amendments include a hedging exemption for floor-based activity but no longer include a *de minimis* dollar amount associated with transactions that do not fall under the limited hedging exemption.

5. The Commission Assumes Regulatory Oversight Role for Non-Member Firms

The Commission considered assuming the role of providing direct primary regulatory oversight for Non-Member Firms. We do not believe, however, that this is a reasonably available alternative because of the judgments reflected in Congress's determinations over time about where to locate that oversight function and our own understanding of the entity best suited to that role. As discussed in detail above, the Exchange Act, as originally adopted in 1934, left regulation of the off-exchange market to the Commission.[261] In 1938, Congress provided for the creation of Associations,[262] and from 1965 until 1983, broker-dealers engaged in off-exchange trading could become members of NASD or opt to be regulated directly by the Commission under the SECO program.[263] In 1983, the Commission recommended that Congress eliminate the SECO program because, among other things, only a limited number of broker-dealers chose to be regulated under the SECO program [264] and maintaining the program disproportionately affected the Commission's resources. Congress then amended the Act to eliminate the SECO program,[265] which had the effect of making the regulation of off-exchange trading under the Exchange Act the responsibility of an Association.[266] Consistent with this, in this rulemaking the Commission is proposing to modify the Rule 15b9–1 exemption so that, with limited exceptions, the off-exchange transactions of broker-dealers will be subject to the oversight and rules of an Association, the SRO primarily responsible for regulating trading in the off-exchange market. As discussed throughout, we believe an Association is best positioned to regulate that trading. Based on the foregoing, including the Congress's determination to eliminate the SECO Program,[267] the Commission does not view assumption of direct responsibility for off-exchange broker-dealer oversight by the Commission as a reasonably available alternative.

E. Request for Comment on Economic Analysis

The Commission has identified above economic effects associated with the proposal and requests comment on all aspects of its preliminary economic analysis. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such economic effects. In particular, the Commission seeks comment on the following:

47. Do commenters agree with the Commission's analysis of the potential economic effects of the proposed amendments? Why or why not?

48. Do commenters agree with the Commission's assessment of the baseline for the economic effects?

49. Is the supervision and surveillance of Non-Member Firms with substantial cross-market or off-exchange trading sufficient under current rules? Why or why not?

50. How would further changes to the scope of existing Regulatory Services Agreements between SROs affect regulators' ability to effectively surveil cross-market and off-exchange trading?

51. Do commenters believe that there are additional categories of benefits or costs that could be quantified or otherwise monetized? If so, please identify these categories and, if possible, provide specific estimates or data.

52. Are there any additional benefits that may arise from the proposed amendments? Or are there benefits described above that would not likely result from the proposed amendments? If so, please explain these benefits or lack of benefits in detail.

53. Are there any additional costs that may arise from the proposed amendments? Are there methods by which the Commission could reduce the costs imposed by the proposed amendments enabling effective regulatory oversight of Non-Member Firms? Please explain. Are there any other potential consequences of the proposed amendments? Or are there costs described above that would not likely result from the proposed amendments? If so, please explain these costs or lack of costs in detail.

54. Does the release appropriately describe the potential effects of the proposed amendments on the promotion of efficiency, competition, and capital formation? Why or why not? If possible, commenters should provide analysis and empirical data to support their views on the competitive or anticompetitive effects, as well as the efficiency and capital formation effects, of the proposed amendments.

55. Are there alternative mechanisms for achieving the Commission's goal of improving regulatory oversight while promoting competition and capital formation?

56. To the extent that there are reasonable alternatives to the proposed amendments, what are the potential costs and benefits of those reasonable alternatives relative to the proposed amendments? What are the potential effects on the promotion of efficiency, competition, and capital formation of those reasonable alternatives?

57. Would the cost of FINRA or exchange membership cause some Non-Member Firms to alter their activities in any way? If so, how would Non-Member Firms alter their business? How would these changes affect competition and market efficiency? How would these changes affect market quality?

58. Would the proposed amendments cause Non-Member Firms to exit the marketplace? If so, how many Non-Member Firms would elect to restrict their operations rather that become members of FINRA or one or more exchanges? How would these changes affect competition and market efficiency? How would these changes

[259] *See* Section II.C.

[260] *Id.*

[261] *See supra* note 27 and accompanying text

[262] *See supra* notes 31–33 and accompanying text.

[263] As previously noted, broker-dealers that traded exclusively on the floor of an exchange were exempt from broker-dealer registration with the Commission until the 1975 Amendments, which extended the Commission's SECO rulemaking authority to any exchange member trading on an exchange other than an exchange of which it was a member. *See supra* note 41 and accompanying text. Broker-dealers registering with the Commission as a result of the 1975 Amendments became subject to the SECO rules in 1976, but could remain exempt from such rules pursuant to Rule 15b8–1. *See supra* note 43 and accompanying text.

[264] Because many broker-dealers chose to become members of NASD rather than participating in the SECO Program, only 12 percent of all active Commission-registered broker-dealers effecting transactions off-exchange were SECO broker-dealers by May 1982. House Comm. on Energy and Commerce, ''Authorization of Appropriations for the Securities and Exchange Commission,'' H.R. Rep. No. 98–106, at 597 (1983).

[265] Pub. L. 98–38, 97 Stat. 205 (1983).

[266] *See supra* note 31 and accompanying text.

[267] The report accompanying the amendments made to the Act in 1983 cited a preference for self-regulation over direct regulation by the Commission. *See supra* note 46 and accompanying text.

affect market quality? What would be the effect on liquidity of Non-Members Firms exiting the marketplace?

59. Are there costs related to FINRA membership for Non-Member Firms that the Commission has not considered? What are these costs? Please be specific.

60. For Non-Member Firms, how much will the cost of FINRA membership vary? Will the cost of FINRA membership cause some firms to change the scope of their business? If so, in what manner?

61. Do commenters agree with the assumptions underlying the Commission's estimates of the range for membership costs for exchanges?

62. Do commenters agree with the Commission's preliminarily belief that the TAF collected by FINRA would not be expected to materially change if the proposed amendments were adopted? What would the effect of the proposed amendments be on the TAF assessed to current FINRA members? What would the effect of the proposed amendments be on the TAF assessed to Non-Member Firms that choose to become FINRA members?

63. Has the Commission properly accounted for the compliance cost burden required to achieve the access to exchanges necessary to comply with the proposed amendments? Would any costs beyond basic membership be the direct result of the proposed amendments?

64. If Non-Member Firms were to elect to join additional exchanges rather than becoming members of FINRA, how many exchanges would they expect to join?

65. Is the Commission correct in assuming that the cost of membership is the relevant compliance cost burden and that connectivity or trading related costs are optional for most to all of the exchanges? Are there any exchanges on which connectivity or trading rights costs are mandatory even if a broker-dealer trades through another member broker-dealer that is paying the connectivity or trading rights costs?

66. Are the Commission's assumptions on the manner in which Section 3 fees are allocated in off-exchange transactions with Non-Member Firms correct? Are there mechanisms in place already that result in these fees being passed on to Non-Member Firms that transact in ATSs, or elsewhere in the off-exchange market?

67. Would a Non-Member Firm elect to become a member of one or more exchanges rather than become a member of FINRA? If so, please discuss in detail why a Non-Member Firm would make such an election. Which exchanges, in particular, are Non-Member Firms likely to join, if they join additional exchanges, as a result of the proposed amendments? How would these changes affect competition and market efficiency? How would these changes affect market quality?

68. Has the Commission articulated all reasonable alternatives for the proposed rule? If not, please provide additional alternatives and how their costs and benefits would compare to the proposed rule. For the alternatives described above, has the Commission accurately described the costs and benefits? If not, please provide more accurate costs and benefits, including any data or statistics that support those costs and benefits.

69. One alternative discussed is to effect improved off-exchange supervision through the action of exchanges. Is this alternative practical? What resources would exchanges have to acquire to provide efficient and effective supervision of their members' off-exchange trading activity?

70. What effects could the proposed amendments have on FINRA's oversight of the off-exchange market? How could FINRA's revenues and cost of regulation be affected? What changes should FINRA consider implementing should the Commission approve the proposed amendments to Rule 15b9–1? Please be specific.

71. Would the proposed amendments create a barrier to entry for new prospective Associations? Would there be benefits to competition among Associations?

VI. Paperwork Reduction Act

Certain provisions of these proposed amendments to Rule 15b9–1 contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[268] As discussed in Part II.D, the proposed amendments to Rule 15b9–1 would require dealers relying on the floor member hedging exemption under Rule 15b9–1 to establish, maintain, and enforce certain written policies and procedures. Compliance with these collections of information requirements would be mandatory for firms relying on the rule. The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title of new collection of information is ''Rule 15b9–1 Floor Member Hedging Exemption.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number.

[268] 44 U.S.C. 3501 *et seq.*

A. Summary of Collection of Information

The proposed amendments to Rule 15b9–1 would include a collection of information within the meaning of the PRA for broker-dealers relying on the floor member hedging exemption under the proposed Rule. The floor member hedging exemption under the proposed amendments to Rule 15b9–1 would permit a qualifying dealer[269] that conducts business on the floor of a national securities exchange to effect transactions for its own account with or through another registered broker or dealer that are solely for the purpose of hedging the risks of its floor-based activities, by reducing or otherwise mitigating the risks thereof. Broker-dealers relying on the floor member hedging exemption must establish, maintain, and enforce written policies and procedures reasonably designed to ensure and demonstrate that such hedging transactions reduce or otherwise mitigate the risks of the financial exposure the dealer incurs as a result of its floor-based activity. In addition, such dealers would be required to preserve a copy of their policies and procedures in a manner consistent with Rule 17a–4 until three years after the date the policies and procedures are replaced with updated policies and procedures.

B. Proposed Use of Information

The policies and procedures required under Rule 15b9–1 would be used by the Commission and SROs to understand how dealers relying on the floor member hedging exemption evaluate whether their off-exchange transactions are conducted solely for the purpose of hedging risks incurred from the dealer's floor-based business and that such dealers are complying with the requirements of Rule 15b9–1. These policies and procedures will be used generally by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including Section 15(b)(8) and Rule 15b9–1 thereunder. In addition, SROs may use the information to monitor and enforce compliance by

[269] A broker-dealer would have to meet the threshold requirements of proposed Rule 15b9–1. Specifically, such broker-dealer would have to: (1) Be a member of a national securities exchange; (2) carry no customer accounts; and (3) effect transactions in securities solely on a national securities exchange of which it is a member, except for transactions complying with the floor member hedging exemption or the Regulation NMS routing exemption.

their members with applicable SRO rules and the federal securities laws.

C. Respondents

The Commission estimates that up to 100 dealers may rely on the floor member hedging exemption contained in Rule 15b9–1. The Commission notes that, based on publicly available information reviewed in the first quarter of 2015, there are currently 125 broker-dealers registered with the Commission that are not members of an Association. Of those 125 broker-dealers, 77 broker-dealers currently disclose being an exchange member engaged in floor activities on Form BD.[270] The Commission believes that while not all of these dealers will choose to avail themselves of the floor member hedging exemption contained in Rule 15b9–1 because the exemption restricts off-exchange transactions solely to those that hedge risks incurred as a result of their floor-based activity, some firms not included in this number may decide to avail themselves of the floor member hedging exemption. The Commission preliminarily believes, however, that more of these firms are likely to want the ability to engage in off-exchange transactions other than those that hedge the risk of their floor-based activity, and may, accordingly, choose to join an Association as a result of the proposed amendments to Rule 15b9–1.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission estimates that the one-time, initial burden for a dealer to establish written policies and procedures as required under Rule 15b9–1 would be approximately 16 hours.[271] This figure is based on the estimated number of hours to develop a set of written policies and procedures, including review and approval by appropriate legal personnel. The Commission notes that the policies and procedures required by the proposed Rule are limited to hedging transactions that reduce or otherwise mitigate the risks of the financial exposure the dealer incurs as a result of its floor-based activity. In addition, the Commission estimates the annual burden of maintaining and enforcing such policies and procedures, including a review of such policies at least annually, would be approximately 96 hours for each dealer.[272] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining relevant systems and internal controls, performing necessary testing and monitoring of off-exchange hedging transactions as they relate to the broker-dealer's floor-based activities and maintaining copies of the policies and procedures for the period of time required by the proposed rule.

The Commission estimates that the initial burden associated with Rule 15b9–1 would be 112 hours per dealer, which corresponds to an initial aggregate burden of 11,200 hours.[273] The Commission estimates that the ongoing annualized burden associated with Rule 15b9–1 would be 96 hours per dealer, which corresponds to an ongoing annualized aggregate burden of 9,600 hours.[274]

E. Collection of Information Is Mandatory

All of the collection of information discussed above would be mandatory.

F. Confidentiality of Responses to Collection of Information

To the extent that the Commission receives confidential information pursuant to the collection of information, such information will be kept confidential, subject to the provisions of applicable law.[275]

G. Retention Period for Recordkeeping Requirements

Dealers seeking to take advantage of the proposed hedging exemption would be required to preserve a copy of their policies and procedures in a manner consistent with Rule 17a–4 [276] until

[270] Of the approximately 4,209 total registered broker-dealers as of March 2015, 182 broker-dealers in total disclose being an exchange member engaged in floor activities on Form BD (*note:* The 182 broker-dealers includes the 77 broker-dealers engaged in floor activities that are not members of an Association). The Commission preliminarily believes that broker-dealers engaged in floor activities that are currently members of an Association are unlikely to withdraw from Association membership and begin relying on the floor member hedging exemption because such broker-dealers have already elected to join an Association and reliance on the floor member hedging exemption would limit their permissible off-exchange activity solely to hedging risks incurred as a result of their floor-based business.

[271] This figure is based on the following: (Compliance Manager at 10 hours) + (Compliance Attorney at 5 hours) + (Director of Compliance at 1 hour) = 16 burden hours per dealer.

[272] This figure is based on the following: (Compliance Manager at 60 hours) + (Compliance Attorney at 24 hours) + (Director of Compliance at 12 hours) = 96 burden hours per dealer.

[273] This figure is based on the following: ((16 burden hours per dealer) + (96 burden hours per dealer)) × (100 dealers) = 11,200 burden hours during the first year. In estimating these burden hours, the Commission examined the estimated burdens imposed by other rules applicable to broker-dealers. For example, amendments to Regulation SHO adopted in 2010 required broker-dealers to establish, maintain, and enforce written policies and procedures relating to Rule 201(c) and Rule 201(d)(6) to ensure short-sale orders are, among other things, properly marked, are submitted at the proper price, or are properly off-set (in the case of Rule 201(d)(6). *See* Exchange Act Release No. 61595 (February 26, 2010) 75 FR 11232, 11286 (March 10, 2010) (''Amendments to Regulation SHO''). The policies and procedures relating to Rule 201(c) and Rule 201(d)(6) required under the Amendments to Regulation SHO estimated an average initial one-time burden of 160 burden hours per broker-dealer and ongoing compliance cost of 60 hours annually to ensure the policies and procedures are up-to-date and remain in compliance as well as an additional 336 hours annual to monitor, surveil, and enforce trading in compliance with Rule 201. *Id.* The Commission preliminarily believes that the policies and procedures under the proposed floor member hedging exemption will be substantially less burdensome than those required by the Amendments to Regulation SHO because those policies and procedures require certain technology and real-time monitoring components. For example, under the Amendments to Regulation SHO described above, broker-dealers' policies and procedures must be reasonably designed to enable a broker-dealer to monitor, on a real-time basis, the national best bid so as to determine the price at which a broker-dealer may submit a short sale order to a trading center in compliance with Rule 201(c), and off-setting transactions under the riskless principal provision under Rule 201(d)(6) must be allocated to a riskless principal or customer account within 60 seconds of execution. *Id.* at 11284. In contrast, the policies and procedures under the proposed amendments to Rule 15b9–1 do not involve a real-time monitoring or technology component.

[274] This figure is based on the following: (96 burden hours per dealer) × (100 dealers) = 9,600 ongoing, annualized aggregate burden hours. In estimating these burden hours, the Commission also examined the estimated initial and ongoing burden hours imposed on registered security-based swap dealers under Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information. *See* Exchange Act Release No. 74244 (February 11, 2015) 80 FR 14564, 14683 (March 19, 2015) (''Regulation SBSR''). Regulation SBSR requires registered security-based swap dealers to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations. *Id.* The estimated initial and ongoing compliance burden on registered security-based swap dealers under Regulation SBSR were 216 burden hours and 120 burden hours respectively. *Id.* The Commission preliminarily believes that the initial and ongoing burden hours under the proposed floor member hedging exemption will be substantially less than for registered security-based swap dealers under Regulation SBSR, because the policies and procedures under Regulation SBSR require programing certain systems for transaction reporting and performing testing of such systems. *Id.* In contrast, the proposed floor member hedging exemption would not necessarily require programming or testing of certain systems and is a much more discrete set of policies and procedures as compared to the more comprehensive policies and procedures required by Regulation SBSR, which cover, among other things, the full scope of reporting security-based swap transactions by registered security-based swap dealers and others.

[275] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[276] 17 CFR 240.17a–4. Registered brokers and dealers are already subject to existing recordkeeping and retention requirements under Rule 17a–4. However, proposed Rule 15b9–1 contains a requirement that a dealer relying on the floor member hedging exemption preserve a copy of its

three years after the date the policies and procedures are replaced with updated policies and procedures.

H. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to:

72. Evaluate whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information shall have practical utility;

73. Evaluate the accuracy of our estimate of the burden of the proposed collection of information;

74. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

75. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File Number [ ]. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number [ ] and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE., Washington, DC 20549–2736. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Consideration of Impact on Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[277] the Commission requests comment on the potential effect of the proposed amendments to Rule 15b9–1 on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980[278] (''RFA'') requires the Commission to undertake an initial regulatory flexibility analysis of the impact of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[279] For purposes of Commission rulemaking in connection with the RFA,[280] a small entity includes a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,[281] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[282] With regard to exchanges, a small entity is an exchange that has been exempt from the reporting requirements of Rule 601 under Regulation NMS, and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[283]

The Commission examined recent FOCUS data for the 125 Non-Member Firms and concluded that at most 11 of the affected entities have net capital of $500,000 or less, and some of those might not be small entities because they might be affiliates of larger organizations.

Although the Commission lacks the data to quantify these firms' off-exchange activity, it does have FOCUS information on the firms' disclosed activities. Based on this disclosure, the Commission believes that many of these firms may be able to trade off-exchange under the proposed floor member hedging exemption for a number of reasons. First, a number of firms disclose floor-based activity that may allow them to trade off-exchange under the floor member hedging exemption: five report writing options and six disclose floor activity.[284] Second, one discloses only trading in government debt securities, so is unlikely to be affected by the proposed amendments. Finally, only two of the eleven firms disclose proprietary trading activity. These firms would be affected only by the elimination of the *de minimis* allowance, unless the firms can rely on the floor member hedging exemption for such activity.[285] Therefore, the Commission certifies that the proposed amendments to Rule 15b9–1 would not, if adopted, have a significant economic impact on a substantial number of small entities.

76. We encourage written comments regarding this certification. We solicit comment as to whether the proposed amendments could have impacts on small entities that have not been considered. We request that commenters describe the nature of any impacts on small entities and provide empirical data to support the extent of such effect.

Such comments will be placed in the same public file as comments on the proposed amendments to Rule 15b9–1. Persons wishing to submit written comments should refer to the instructions for submitting comments in the front of this release.

IX. Statutory Authority—Text of the Proposed Amendments

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly Sections 3, 15(b)(9), 15A, 17, 19, 23, and 36 thereof, the Commission is proposing amendments to Title 17, Chapter II of the Code of Federal Regulations as follows.

List of Subjects in 17 CFR Part 240

Brokers, Dealers, Registration, Securities.

policies and procedures in a manner consistent with Rule 17a–4 until three years after the date the policies and procedures are replaced with updated policies and procedures. The burdens associated with this recordkeeping obligation have been accounted for in the burden estimates discussed above for Rule 15b9–1.

[277] 5 U.S.C. 603.

[278] 5 U.S.C. 603(a).

[279] 5 U.S.C. 605(b).

[280] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[281] 17 CFR 240.17a–5(d).

[282] *See* 17 CFR 240.0–10(c).

[283] *See* 17 CFR 240.0–10(e).

[284] Firms often disclose multiple activities, so the number of disclosed activities in this discussion exceeds the number of firms.

[285] Hedging activity is proprietary trading activity.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201, *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Section 240.15b9–1 is revised to read as follows:

§ 240.15b9–1 Exemption for certain exchange members.

Any broker or dealer required by section 15(b)(8) of the Act (15 U.S.C. 78*o*(b)(8)) to become a member of a registered national securities association shall be exempt from such requirement if it:

(a) Is a member of a national securities exchange;

(b) Carries no customer accounts; and

(c) Effects transactions in securities solely on a national securities exchange of which it is a member, except that with respect to this paragraph (c):

(1) A dealer that conducts business on the floor of a national securities exchange may effect transactions off the exchange, for the dealer's own account with or through another registered broker or dealer, that are solely for the purpose of hedging the risks of its floor-based activities, by reducing or otherwise mitigating the risks thereof. A dealer seeking to rely on this exception shall establish, maintain and enforce written policies and procedures reasonably designed to ensure and demonstrate that such hedging transactions reduce or otherwise mitigate the risks of the financial exposure the dealer incurs as a result of its floor-based activity. Such dealer shall preserve a copy of its policies and procedures in a manner consistent with 17 CFR 240.17a–4 until three years after the date the policies and procedures are replaced with updated policies and procedures; and

(2) A broker or dealer may effect transactions off the exchange resulting from orders that are routed by a national securities exchange of which it is a member, to prevent trade-throughs on that national securities exchange consistent with 17 CFR 242.611.

By the Commission.

Dated: March 25, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–07293 Filed 4–1–15; 8:45 am]

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FEDERAL REGISTER

Vol. 80 Thursday,
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Part VII

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9243 of March 30, 2015

César Chávez Day, 2015

By the President of the United States of America

A Proclamation

For more than two centuries, the arc of our Nation's progress has been shaped by ordinary people who have dedicated their lives to the extraordinary work of building a more perfect Union. It is a story of achievement and constant striving that has found expression in places where America's destiny has been decided—in Seneca Falls, Selma, and Stonewall, and in the golden fields of California where an American hero discovered his mighty voice. Today, we honor César Chávez and his lifetime of work to make our country more free, more fair, and more just, and we reaffirm the timeless belief he embodied: those who love their country can change it.

A son of migrant workers and a child of the Great Depression, César Chávez believed every job has dignity and every person should have the chance to reach beyond his or her circumstances and realize a brighter future. When no one seemed to care about the farm workers who labored without basic protections and for meager pay to help feed the world, César Chávez awakened our Nation to their deplorable conditions and abject poverty—injustices he knew firsthand. He organized, protested, fasted, and alongside Dolores Huerta, founded the United Farm Workers. Slowly, he grew a small movement to a 10,000-person march and eventually a 17-million-strong boycott of table grapes, rallying a generation around ''La Causa'' and forcing growers to agree to some of the first farm worker contracts in history. Guided by a fierce commitment to nonviolence in support of a righteous cause, he never lost faith in the power of opportunity for all.

As a Nation, we know the struggle to live up to the principles of our founding does not end with any one victory or defeat. After César Chávez fought for higher wages, he pushed for fresh drinking water, workers' compensation, pension plans, and protection from pesticides. He strove every day for the America he knew was possible. Today, we must take up his work and carry forward this great unfinished task.

When immigrants labor in the shadows, they often earn unfair wages and their families and our economy suffer—that is one reason why we have to fix our broken immigration system and why I keep calling on the Congress to enact comprehensive immigration reform. We need to continue to defend the collective bargaining rights countless individuals have fought so hard for and ensure our economy rewards hard work with a fair living wage, paid leave, and equal pay for equal work.

César Chávez knew that when you lift up one person, it enriches a community; it bolsters our economy, strengthens our Nation, and gives meaning to the creed that out of many, we are one. As we celebrate his life, we are reminded of our obligations to one another and the extraordinary opportunity we are each given to work toward justice, equal opportunity, and a better future for every one of our sisters and brothers.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 31, 2015, as César Chávez Day. I call upon all Americans to observe this day with

appropriate service, community, and education programs to honor César Chávez's enduring legacy.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of March, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–07783
Filed 4–1–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9244 of March 30, 2015

Education and Sharing Day, U.S.A., 2015

By the President of the United States of America

A Proclamation

In every child—every girl dreaming big dreams and every boy hungry to make something of himself—there exists limitless potential. Our young people are the problem-solvers, thinkers, and visionaries of tomorrow who will change the world as we know it, and they deserve the chance to fulfill their enormous promise, no matter who they are or where they live. A good education can open the door to opportunity, and it should be within the reach of all who yearn for the chance to develop their minds and talents. Today, we celebrate the transformative power of education and honor a man who inspired a passion for learning among a generation of students.

Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, dedicated his life to promoting education as the cornerstone of humanity. A tireless advocate for youth around the world, he believed that ''as long as there is still one child that does not receive an adequate education, we can neither be satisfied nor slacken our efforts.'' In an era where a woman's education was not valued the same as a man's, the Rebbe worked to tear down barriers that stood in the way of girls who wanted to learn. He established a Jewish organization for women and directed his teachings of service and scholarship equally to young girls and boys. He was even known to write, ''There must be a girl!'' on educational materials that depicted only boys.

Because of leaders like the Rebbe, we have made great strides toward achieving quality education for all—but his legacy is not only a story of progress, it is also a call to remember his words and take up this unfinished task. Today, 62 million girls around the world who should be in school are not. Children who deserve an education, who have the power to change the course of history, face unacceptable obstacles because of their gender, the circumstances of their birth, or the customs of their society.

If we want to strengthen families and communities, bolster economic growth, and promote stability worldwide, we must work to increase the number of girls in school and empower all children with the resources they need to reach for a brighter future. This is not only a humanitarian issue; it is also critical to our security and global economic prosperity. That is why First Lady Michelle Obama and I recently launched a new initiative called *Let Girls Learn.* As part of this effort, my Administration will be supporting hundreds of community-driven projects around the world that will build on investments we have made and successes we have achieved in global primary school education. At the same time, we are making it clear to any country who wants to work with us that they must address the challenges preventing young women from attending and completing school—such as fees, threats of violence, and the false belief that girls are not worthy of an education.

We are committed to making a global and generational impact, but *Let Girls Learn* is also about reminding Americans about the importance of high-quality education for all. As we help lift up children worldwide, my Administration will continue to fight for every young person here at home. We will not let up on our efforts to deliver the best possible education

to all people in the United States, including our work to expand access to high-quality preschool to every child and provide our Nation's classrooms with the best technology. And we are expanding our strategy to make higher education more affordable by promoting a Student Aid Bill of Rights and calling for 2 years of free community college for anyone who is willing to work for it.

Across the globe, girls have pushed forward to pursue an education in the face of poverty and threats to their safety. They are bold, ambitious, and undeterred by immense challenges. Today, we are called to meet their resolve with a commitment worthy of their character. On Education and Sharing Day, U.S.A., we recognize educators, pioneers of change, and all those who have unlocked the spark of something extraordinary within a child, and we rededicate ourselves to building a world where the destiny of every young person is limited only by the size of their dreams and the power of their imagination.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 31, 2015, as Education and Sharing Day, U.S.A. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of March, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–07784
Filed 4–1–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Executive Order 13694 of April 1, 2015

Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, find that the increasing prevalence and severity of malicious cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. I hereby declare a national emergency to deal with this threat.

Accordingly, I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be responsible for or complicit in, or to have engaged in, directly or indirectly, cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States and that have the purpose or effect of:

(A) harming, or otherwise significantly compromising the provision of services by, a computer or network of computers that support one or more entities in a critical infrastructure sector;

(B) significantly compromising the provision of services by one or more entities in a critical infrastructure sector;

(C) causing a significant disruption to the availability of a computer or network of computers; or

(D) causing a significant misappropriation of funds or economic resources, trade secrets, personal identifiers, or financial information for commercial or competitive advantage or private financial gain; or

(ii) any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State:

(A) to be responsible for or complicit in, or to have engaged in, the receipt or use for commercial or competitive advantage or private financial gain, or by a commercial entity, outside the United States of trade secrets misappropriated through cyber-enabled means, knowing they have been misappropriated, where the misappropriation of such trade secrets is reasonably likely to result in, or has materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any activity described in subsections (a)(i) or (a)(ii)(A) of this section or any person whose property and interests in property are blocked pursuant to this order;

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or

(D) to have attempted to engage in any of the activities described in subsections (a)(i) and (a)(ii)(A)–(C) of this section.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 3. The prohibitions in section 1 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term ''critical infrastructure sector'' means any of the designated critical infrastructure sectors identified in Presidential Policy Directive 21; and

(e) the term ''misappropriation'' includes any taking or obtaining by improper means, without permission or consent, or under false pretenses.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence

in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 10. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
April 1, 2015.

[FR Doc. 2015–07788
Filed 4–1–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Notice of March 31, 2015

Continuation of the National Emergency With Respect to South Sudan

On April 3, 2014, by Executive Order 13664, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to South Sudan, which has been marked by activities that threaten the peace, security, or stability of South Sudan and the surrounding region, including widespread violence and atrocities, human rights abuses, recruitment and use of child soldiers, attacks on peacekeepers, and obstruction of humanitarian operations.

The situation in and in relation to South Sudan continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on April 3, 2014, to deal with that threat must continue in effect beyond April 3, 2015. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13664.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
March 31, 2015.

[FR Doc. 2015–07786
Filed 4–1–15; 11:15 am]
Billing code 3295–F5

Reader Aids

Federal Register

Vol. 80, No. 63

Thursday, April 2, 2015

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FEDERAL REGISTER PAGES AND DATE, APRIL

17307–17682 1
17683–18082 2

CFR PARTS AFFECTED DURING APRIL

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.

3 CFR

Proclamations:
9243 18073
9244 18075
Executive Orders:
13694 18077
Administrative Orders:
Notices:
Notice of March 31, 2015 18081

5 CFR

532 17307

7 CFR

953 17307

10 CFR

Proposed Rules:
429 ..... 17586, 17826
430 ..... 17355, 17359
431 ..... 17363, 17586, 17826

13 CFR

Proposed Rules:
130 17708

14 CFR

23 ..... 17310, 17312
Proposed Rules:
39 ..... 17366, 17368

17 CFR

Proposed Rules:
240 18036

18 CFR

35 17654

23 CFR

Proposed Rules:
515 17371

24 CFR

Proposed Rules:
5 17548
92 17548
135 17372
200 17548
574 17548
576 17548
578 17548
880 17548
882 17548
883 17548
884 17548
886 17548
891 17548
960 17548
966 17548
982 17548
983 17548

26 CFR

1 17314
602 17314

33 CFR

117 17324
161 17326
164 17326
165 ..... 17683, 17685, 17687
Proposed Rules:
101 17372
104 17372
105 17372
120 17372
128 17372

37 CFR

1 17918
3 17918
5 17918
11 17918
41 17918

40 CFR

52 ..... 17327, 17331, 17333, 17689, 17692
180 17697
300 17703
Proposed Rules:
52 17712

41 CFR

60–20 17373

45 CFR

Proposed Rules:
1355 17713

47 CFR

74 17343

49 CFR

173 17706

50 CFR

17 17974
300 17344
660 17352
Proposed Rules:
13 17374
21 17374
622 17380

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 March 23, 2015

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