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Presidential Documents

Title 3—

The President

Memorandum of April 29, 2015

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the Foreign Assistance Act of 1961 to direct the drawdown of up to $35 million in defense services of the Department of Defense to provide assistance to France in its efforts to secure Mali, Niger, and Chad from terrorists and violent extremists, and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, April 29, 2015

[FR Doc. 2015–11761
Filed 5–13–15; 08:45 am]
Billing code 4710–10

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR part 417

[Docket No. FSIS–2009–0019]

HACCP Systems Validation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of the final revision of the Compliance Guideline for Hazard Analysis Critical Control Point (HACCP) systems validation and responding to comments received on the draft guide that FSIS published in May 2013 in the **Federal Register**. In addition, FSIS is announcing its plans to verify that establishments meet all validation requirements.

DATES: Establishments may start using the new guidance now. FSIS will begin verifying that large establishments meet all validation requirements on January 4, 2016. FSIS will begin verifying that small and very small establishments meet all verification requirements on April 4, 2016.

FOR FURTHER INFORMATION CONTACT: William K. Shaw, Jr., Ph.D., Office of Policy and Program Development, FSIS, USDA, 1400 Independence Avenue SW., Patriots Plaza 3, Mailstop 3782, Room 8–142, Washington, DC 20250. *Telephone:* (301) 504–0852 Fax: (202) 245–4792. *Email: william.shaw@fsis.usda.gov*.

Background

FSIS administers the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq*.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq*.) to protect the health and welfare of consumers by preventing the distribution in commerce of meat or poultry products that are unwholesome, adulterated, or misbranded. To reduce the risk of foodborne illness from meat or poultry products, FSIS issued regulations on July 25, 1996, that require that federally inspected establishments adopt HACCP systems (61 FR 38806). These regulations require that federally inspected establishments adopt measures to prevent or control the occurrence of food safety hazards at each stage of the production process where such hazards are reasonably likely to occur.

The HACCP regulations in 9 CFR part 417 require that establishments validate the HACCP plan's adequacy to control the food safety hazards identified by the hazard analysis (9 CFR 417.4(a)). These regulations prescribe requirements for the initial validation of an establishment's HACCP plan and require that establishments ''conduct activities designed to determine that the HACCP plan is functioning as intended.'' During this initial validation period, establishments are to ''repeatedly test the adequacy of the CCPs, critical limits, monitoring and recordkeeping procedures, and corrective actions'' prescribed in their HACCP plans (9 CFR 417.4(a)(1)). Validation under 9 CFR 417.4(a)(1) requires that establishments assemble two types of data: (1) The scientific or technical support for the judgments made in designing the HACCP system, and (2) evidence derived from the HACCP plan in operation to demonstrate that the establishment is able to implement the critical operational parameters necessary to achieve the results documented in the scientific or technical support. The establishment is to maintain the initial validation records for the life of the HACCP system to meet the requirements of 9 CFR 417.5(a)(1) and 9 CFR 417.5(a)(2).

The regulations also provide that ''[v]alidation . . . encompasses reviews of the records themselves, routinely generated by the HACCP system, in the context of other validation activities'' (9 CFR 417.4(a)(1)). Because the results obtained under prerequisite programs could affect decisions made in the hazard analysis, an establishment is required to maintain records associated with these programs as supporting documentation for its hazard analysis (9 CFR 417.5(a)). Thus, validation of the HACCP system involves validation of the critical control points in the HACCP plan, as well as of any interventions or processes used to support decisions in the hazard analysis.

History of Validation Guidance

In March 2010, FSIS posted on its Web site an initial draft guidance document to assist the industry, particularly small and very small establishments, in complying with the requirements for HACCP systems, pursuant to 9 CFR 417.4.

On June 14, 2010, FSIS held a public meeting to discuss the initial draft HACCP validation guidance and received input from stakeholders. The transcript of the June 2010 public meeting is available on the FSIS Web site at: *http://www.fsis.usda.gov/wps/wcm/connect/2708ef10-4996-4324-a2e2-3b6501ac81b1/Transcripts_HACCP_Validation_061410.pdf?MOD=AJPERES.*

FSIS received over 2,000 comments on the initial draft guidance, particularly with respect to the use of microbiological testing to validate the effectiveness of HACCP systems in controlling biological hazards. The Agency considered the issues raised by the comments received in response to the May 2010 **Federal Register** notice and at the June 2010 public meeting and developed an updated second draft of the compliance guidance.

On September 22–23, 2011, FSIS shared the second draft of the HACCP validation guidance with the National Advisory Committee on Meat and Poultry Inspection (NACMPI). NACMPI reviewed the draft and provided comments and suggestions to FSIS on how to improve the guidance. The NACMPI report is available on the FSIS Web site at: *http://www.fsis.usda.gov/wps/wcm/connect/c87523dc-44d4-446e-be03-a3e60b2f8e8f/Validation_Issue_Paper_Final.pdf?MOD=AJPERES.* The Agency made additional revisions to the draft guidance in response to the input from NACMPI.

In a May 9, 2012, **Federal Register** notice (77 FR 27135), FSIS announced the availability of, and requested comments on, the revised draft guidance document (*http://www.fsis.usda.gov/wps/wcm/connect/d000cb67-23bc-4303-8f7b-71dcba5e7cd7/2009-0019.pdf?MOD=AJPERES*). In the May 2012 **Federal Register** notice, the Agency also clarified its requirements

for HACCP system validation and responded to the comments that it had received on the initial draft guidance. FSIS received fifty-one (51) comments on its May 2012 revised draft guidance.

FSIS carefully considered the comments and, in a May 2013 **Federal Register** notice (78 FR 32186; May 29, 2013), announced a further revised draft guidance document. In addition to responding to comments and publishing the newly revised draft, FSIS also announced a final public meeting, which was held on June 25, 2013. The transcript of the June 2013 public meeting is available on the FSIS Web site at: *http://www.fsis.usda.gov/wps/wcm/connect/d618094d-20f2-40a3-9103-a587b2fd8a01/Transcript-HACCP-Validation-062513.pdf?MOD=AJPERES.*

Final Guidance

The final guidance is posted at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index.* FSIS encourages establishments to use the guidance to assist them in complying with validation requirements. This guide represents FSIS's thinking and has been updated based on the most recent comments discussed below. FSIS will update it as necessary in the future.

In response to the comments discussed below, the Agency made several improvements to the final guidance to clarify scientific support and in-plant data requirements. In addition to adding a description of expert advice from a processing authority as an example of an acceptable type of scientific support, the guidance now also provides information on how to design challenge studies and on types of microbiological data that should be included in the scientific support. FSIS has also included a new section in the guidance on the types of scientific support that could be used to validate prerequisite programs and a description of best practice guidelines that may be used as scientific or technical support. FSIS has provided additional information on how establishments should address situations where their scientific support does not include measurements of all critical operational parameters. The guidance also clarifies the type of in-plant data that establishments should collect to validate that a new technology addresses hazards as intended. In addition, FSIS has added information on how establishments should validate that a prerequisite program works across multiple points or steps in the process. Finally, the guidance now contains an additional example of scientific support and in-plant data that can be used to validate storage temperature prerequisite programs.

Response to Comments:

FSIS received twenty-one (21) comments on its May 2013 revised draft guidance on HACCP validation from small and very small meat or poultry processors, trade associations, corporations, a consumer advocacy organization, a professional organization, and an individual. The following summarizes and responds to the major issues raised in the comments to the most recent draft guidance document.

1. Concerns about Validation, Its Applicability, and Cost

Comment: A few commenters questioned the need for, and purpose of, the HACCP validation guidance, and several others sought additional information about what FSIS hopes to achieve by publishing the guidance. One commenter requested that, on an ongoing basis, FSIS provide examples of inadequate validation.

Response: As addressed in response to comments in the May, 2013 **Federal Register** notice (78 FR 32186), the validation guidance is necessary because the Agency has found that establishments have not adequately validated their systems. For example, following a 2011 foodborne illness outbreak involving Lebanon bologna, FSIS found that the establishment's scientific support on file did not match the process the establishment was using to make the bologna. In 2012, FSIS concluded that *E. coli* (non-O157) positives likely occurred because of improperly designed interventions. Similarly, FSIS determined that an outbreak involving chicken pot pies in 2007 and a 2011 outbreak from turkey burgers may have occurred because of improperly validated cooking instructions.

FSIS developed the guidelines particularly to help small and very small establishments comply with the regulatory requirements for validation. By periodically updating the guidance document, FSIS will continue to share, and explain how to address, examples of inadequate validation that are associated with food safety problems.

Comment: Many commenters stated that cost of validation is high. One commenter said that the cost of validation may discourage meat establishments from implementing new food safety strategies or interventions.

Response: Validation requirements are not new. FSIS estimates that costs associated with any new validation activities will be minimal. As addressed previously in response to comments and in previous versions of the guidance, microbiological testing is only necessary for in-plant data in limited circumstances, and FSIS has provided low cost ways that establishments can validate their systems in place of microbiological testing. FSIS expects that many establishments will be able to gather the necessary in-plant data from HACCP records already routinely being generated as part of the HACCP system.

Comment: A few commenters stated that FSIS is altering the meaning of ''validation,'' especially when looking at accepted HACCP validation methods from 1996 to today. One commenter asked whether an establishment could choose ''conventional'' command and control inspection instead of meeting HACCP requirements, including validation requirements, if the establishment has a history of producing a safe product.

Response: The final version of the guidance document is consistent with the principles of validation as outlined in the 1996 Pathogen Reduction; Hazard Analysis and Critical Control Point Systems Final Rule (HACCP Final Rule). The HACCP Final Rule stated that data assembled to validate a HACCP plan are usually of two types: (1) theoretical principles, expert advice from processing authorities, scientific data, or other information demonstrating that particular process control measures can adequately address specified hazards (such as studies establishing the temperatures necessary to kill organisms of concern); and (2) in-plant observations, measurements, test results, or other information demonstrating that the control measures, as written into a HACCP plan, can be implemented within a particular establishment to achieve the intended food safety objective. FSIS recognizes that there has been misunderstanding related to the principles of validation, which is why the Agency has developed this compliance guideline and will be issuing instructions to the field once establishments have been given the time to assemble the necessary documentation.

As explained in the May 2013 **Federal Register** notice, the HACCP Final Rule has resulted in great improvements in food safety. The Agency is not going back to a command and control inspection approach because it does not provide establishments with the flexibility to design innovative systems and puts the responsibility for ensuring food safety on FSIS as opposed to the establishment.

Comment: One commenter recommended that the guidance clarify

that establishments need to validate that prerequisite programs work as intended in the overall HACCP system to prevent hazards from occurring. The commenter said that the guidance should discuss validation of prerequisite programs as a complete system, where those controls are intended to support a conclusion that a hazard is not reasonably likely to occur.

Response: Validation is the process of demonstrating that the HACCP system, as designed, can adequately control identified hazards to produce a safe, unadulterated product. Prerequisite programs designed to support a decision in the hazard analysis are part of the HACCP system. When an establishment determines that a hazard is not reasonably likely to occur because the prerequisite program prevents the hazard, that prerequisite program becomes part of the HACCP system. Therefore, as the commenter recommended, establishments need to validate prerequisite programs designed to support decisions in the hazard analysis (*e.g.* Sanitation Standard Operating Procedures, purchase specifications, antimicrobial interventions) to ensure that the overall system can operate effectively. FSIS agrees that HACCP systems are generally designed to provide multiple hurdles of control. However, establishments should be able to support that each hurdle provides some level of prevention or control for the identified hazards.

As explained in the guidance, in order to validate such programs, establishments need to provide scientific documentation that supports that the programs will work as intended and to collect in-plant data to support that the programs can be implemented as designed. FSIS has revised the guidance to provide more examples related to validation of prerequisite programs.

Comment: Several commenters stated that some small establishments produce products so infrequently that they may not be able to obtain 13 production days' worth of records within 90 calendar days. One commenter said that FSIS should ensure that establishments are afforded sufficient flexibility to tailor their HACCP systems to their specific circumstances and questioned the need for a mandatory, fixed validation period. One commenter asked for additional instruction on the information to include with a request to the District Office for additional time to collect in-plant data (*e.g.,* longer than 90 days). Another commenter requested clarification regarding whether the request for an extension to obtain records necessary for validation applies only to establishments under a conditional grant, or if it applies to all establishments.

Response: The regulations provide that the initial validation period is 90 calendar days (9 CFR 304.3(b) and (c) and 381.22(b) and (c)). Ninety days is the period whether a new establishment is operating under a conditional grant, or an existing establishment begins producing new product. Under either situation, for the first 90 days, establishments validate that their system is working as intended to address hazards. For large establishments, 90 calendar days equates to approximately 60 production days. (See FSIS Directive 5220.1 and 78 FR 32187.) FSIS recognizes that many small and very small establishments do not operate daily. Therefore, the guidance also states that a minimum level of records from 13 production days within those initial 90 calendar days should be used to initially validate a small or very small establishment's HACCP system. This number is consistent with FSIS Directive 5220.1 related to an establishment's initial validation. The Agency is recommending small and very small establishments review data from as few as 13 production days because it recognizes that collecting 60 production days' worth of records may be burdensome to small and very small plants.

If the establishment infrequently produces several products that are each part of a separate HACCP category, there is inherent risk with the processes if the establishment does not have experience in producing them. Therefore, to determine whether the system is properly designed and executed, even though the regulations provide 90 days for initial validation, an establishment needing more than 90 days can ask the District Office, in writing, for additional time to collect at least 13 production days of records when it first starts operating, when it begins producing new product, or for a modified HACCP plan if the results of a reassessment indicate additional support is needed. In the request, an establishment should state why more than 90 days are needed to collect the in-plant validation data, and how it plans to gather at least 13 production days worth of in-plant validation data within the next 30 calendar days. The request will then be evaluated on a case by case basis. The establishment should consider focusing validation activities on the product produced most frequently within each HACCP category. In addition, the establishment may consider evaluating data collected for products across multiple HACCP categories to determine whether the data together can support its ability to meet critical operational parameters.

Small and very small establishments that do not currently have the necessary in-plant demonstration data will have until April 4, 2016 to collect the necessary documentation. Infrequent producers should be able to collect data from 13 production days over this time-frame.

Comment: One commenter questioned whether small plants receiving boxed beef components will be required to validate how their multiple processes will address contamination introduced to the product before arriving at the establishment.

Response: All establishments are required to validate that their food safety systems address hazards. There is no one, absolute way in which an establishment producing raw non-intact beef components is to control or prevent Shiga-toxin producing *Escherichia coli* (STEC) organisms in the product. An establishment may have Critical Control Points (CCPs) in its HACCP plan to control the hazard, may use its Sanitation Standard Operating Procedures or another prerequisite program to prevent the hazard, or may use a combination of these mechanisms. Establishments receiving product for grinding may have purchase specifications requiring that all their suppliers have one or more CCPs validated to eliminate or to reduce STEC organisms below detectable levels. Establishments, as part of their purchase specifications, may also receive certificates of analysis with each lot of raw beef components stating that the product has been tested and is negative for STEC organisms. In order to validate such pre-requisite programs, establishments need to provide scientific documentation that supports that the programs will work as intended and to collect in-plant data to support that the programs can be implemented as designed. In the guidance, the validation worksheets include an example of the types of scientific support and in-plant data that can be used to validate a prerequisite supplier program that is designed to prevent the hazard from *E. coli* O157:H7 in raw ground beef or beef trim from being reasonably likely to occur.

In-Plant Data

Comment: Two commenters stated that the Agency is trying to mandate testing through enforcing validation requirements.

Response: As addressed in the May, 2013 **Federal Register** notice (78 FR 32189) and previous drafts of the guidance, microbiological testing is needed for in-plant data in only limited circumstances where the scientific support is inadequate. FSIS will not require establishments to gather in-plant data before and after the application of an intervention if the establishment has adequate scientific supporting documentation, is following the parameters in the scientific support, and can demonstrate that it can meet the critical parameters during operation.

Scientific Support

Comment: One commenter stated that an establishment lacking experience with a new technology should not have to collect additional scientific support for its process and should be able to rely on existing scientific support and in-plant data.

Response: The current version of the guidance clarifies that an establishment introducing a new technology not established in the literature or applying a standard technology in an unusual way (*e.g.,* modifying critical operational parameters from the literature) should gather scientific support and in-plant validation for its new or modified HACCP system under commercial operating conditions. It also clarifies that an establishment that lacks experience with a new technology should also gather scientific and in-plant validation data with the exception of when the effectiveness of the new technology has already been studied, but the establishment lacks experience implementing the technology. In this case, the effort to develop such information may focus more on the collection on in-plant validation data.

Comment: Many commenters stated that there will always be differences between scientific studies and actual establishment processes, and that critical operational parameters implemented in actual processes may be missing from or different than those in the supporting scientific studies. Some commenters were also worried that it may be costly to conduct the necessary scientific research on the specific process used in the establishment. One commenter also said that the fact that the guidance states that ''equipment'' is a critical operational parameter may lead some establishment personnel, as well as FSIS inspection personnel, to assume that the equipment must be exactly the same (*e.g.,* same manufacturer or model number) as that used in the scientific study. Another commenter asked whether establishments are required to validate each piece of equipment. One commenter also requested the Agency define ''process authority'' and state when information from a processing authority would be acceptable scientific support.

Response: As explained in the current and previous versions of the guideline, critical operational parameters are the specific conditions that the intervention must operate under in order for it to be effective. Therefore, if the critical operational parameters implemented in the actual process are consistent with those in the supporting documentation, then establishments can expect to achieve similar results as those found in the scientific support. FSIS has identified a number of cases where differences in critical operational parameters between an establishment's scientific support and those implemented in the actual process led to food safety problems. For this reason, it is important that the establishment's actual process follow the critical operational parameters in its scientific support.

FSIS recognizes that there may be cases where levels of a critical operational parameter in the scientific support may not match the level used in the actual process but is still effective. In those cases, as stated in the guidance, to document its scientific support the establishment should document its scientific rationale for determining that a different level would not affect the efficacy of the intervention or process. Such a justification can be provided by a process authority. However, as recommended in the guideline, the justification should include reference to peer-reviewed scientific data and should not rely on the processing authority's expert opinion alone to ensure that the decision is science based. If the establishment does not have a scientifically based rationale for why the different level would not affect the efficacy of the intervention or process, then the establishment would need to gather additional data.

When an establishment uses critical operational parameters from multiple studies together in the same process, the establishment will need to support that the new combination of parameters would be as effective as those studied in the individual articles. An establishment will also need additional support if its documentation does not contain measurement of a critical operational parameter. For example, humidity is known to be a critical operational parameter during cooking. If an establishment's support for a heat treatment does not address humidity, the establishment will need to document why this parameter is not critical for that treatment. If no scientific justification can be provided, then the establishment will likely need additional data to support the undocumented process.

The guidance continues to state that equipment is a critical operational parameter because the correct equipment is necessary to achieve other critical operational parameters within the process. Based on the comments, FSIS has clarified in the revised guidance that the equipment is a critical operational parameter in situations when using completely different equipment (*e.g.,* a manual spray pump vs. a spray cabinet or a commercial smokehouse vs. a home-style dehydrator) would not achieve the critical parameters of the study (such as temperature, pressure, duration, volume, relative humidity). In most cases, the same equipment produced under a different model number or by a different manufacturer (*e.g.,* a spray cabinet or smokehouse produced by a different manufacturer than that reported in the scientific support) should not affect the establishment's ability to meet other critical operational parameters such as temperature or pressure.

Comment: One commenter asked whether Agency personnel would accept many commonly used supporting documents (*e.g.* Appendix A of the Compliance Guidelines For Meeting Lethality Performance Standards For Certain Meat And Poultry Products) as scientific support for validating the establishment's process.

Response: Establishments may continue to use Appendix A as scientific support to validate that their food safety system effectively addresses hazards. FSIS included a Q&A in the previous and current versions of the guidance that addresses this concern. Specifically, the guidance reads, ''*Question:* If I use Appendix A as the scientific support documentation for a fully cooked RTE process, do I need additional scientific information? *Answer:* No, Appendix A has been validated to achieve the performance standards for the reduction of *Salmonella* contained in 9 CFR 318.17(a)(1) and 381.150(a)(1). Therefore, provided all critical operational parameters can be met, no additional support is needed.'' FSIS has and will continue to instruct inspection program personnel (IPP) and Enforcement, Investigation, and Analysis Officers (EIAOs) that FSIS guidance documents are a type of scientific support that may be used by

establishments to meet the first element of validation.

Comment: One commenter questioned how an establishment could relate the effectiveness of a food safety strategy to a specific pathogen and adhere to the process that actually occurs in the plant, if pathogens cannot be introduced into the establishment. The commenter references a 2002 guidance document titled ''Guidance for Minimizing the Risk of *Escherichia coli* O157H:7 and *Salmonella* in Beef Slaughter Operations'' (*http://www.fsis.usda.gov/wps/wcm/connect/74de2bea-74d6-491b-b2cf-0047650bf0c6/BeefSlauterGuide.pdf?MOD=AJPERES*) and a discussion in the guidance document regarding indicator testing. Another commenter stated that the following statement may prevent innovation when scientific support is not readily available: ''[i]n general, establishments should not rely on scientific support containing data only from indicator or surrogate organisms unless there is sufficient data to establish a relationship between the presence or level of a pathogen or toxin and the indicator organism.'' The commenter said that indicator or surrogate organisms can be used in-plant, provided there is data to establish a relationship between the two.

Response: The previous and current versions of the validation guidance document address the use of indicator organisms during in-plant validation studies (page 14). FSIS agrees that an establishment may use an indicator or surrogate organism to validate a process in-plant, provided there is data to establish a relationship between the indicator or surrogate and pathogen. This fact is stated on page 14 and is consistent with the discussion on indicator organisms in the ''Guidance for Minimizing the Risk of *Escherichia coli* O157H:7 and *Salmonella* in Beef Slaughter Operations.'' FSIS does not agree that the guidance will prevent innovation and is unclear why the commenter feels it will prevent innovation.

Comment: Several commenters suggested that a consortium to identify critical operational parameters would be useful. Commenters also requested that FSIS provide a reference guide, pointing establishments to scientific documents and guidance on support for monitoring frequencies of CCPs be provided. One commenter asked where small and very small plant owners should get assistance with validating their HACCP plans and asked whether, and to what extent, the Agency's small plant office will give guidance to plant operators.

Response: FSIS has several resources available to assist establishments with identifying critical operational parameters from scientific support documents including the askFSIS system and the small plant help desk. FSIS has also identified HACCP contacts and coordinators on its Web site that provide technical advice, assistance, and resources and that conduct activities to support HACCP implementation in small and very small plants.

Comment: Two commenters stated that the guidance that establishments validate at least one product per HACCP category was not helpful. One of the commenters said that the Agency is instructing the meat industry to conduct its own individualized risk assessment of the products produced and to make the appropriate determination without any guidance from the Agency. The other commenter predicted that Agency personnel will not accept in-plant data for one product within each HACCP category as sufficient to validate the food safety system.

Response: The guidance explains how to properly validate by identifying at least one product per HACCP category for which the establishment collects in-plant data. FSIS has provided food science principles that can be used to identify the products using a risk-based framework. By using such principles establishments can select a product most representative of a worst case scenario and therefore collect in-plant data most protective of public health. FSIS recognized that collecting data for more than one product within each HACCP category could be burdensome. Therefore, the Agency requested input from NACMPI, and the committee agreed with this approach.

Comment: A few commenters requested that the Agency include examples of processes that may use Appendix A and Appendix B as scientific support for validating their food safety system, since these Agency documents are commonly utilized as scientific support.

Response: FSIS added examples of processes that can use Appendix A or B as scientific support in the May 2013 guidance. Examples are provided on pages 60 and 63 for processes using Appendix A and Appendix B as scientific support.

Examples

Comment: One commenter asked why the roast beef example in the validation worksheet (that used Appendix A as the scientific support) did not identify dwell time.

Response: The example using Appendix A on page 63 does include a dwell time of 112 minutes.

Comment: One commenter recommended that the worksheet examples be more specific in terms of the type of data that should be collected.

Response: The guidance provides additional examples of the types of scientific support and in-plant data that establishments could maintain for different products and processes in Appendix 4. As explained in the guidance, if an establishment has a specific question regarding the type of data that should be collected for its process and product, it can submit a question to the askFSIS system.

Comment: One commenter said that the ongoing verification activities that are listed in the example on page 33 are unreasonable. Based on a particular example, the commenter also expressed concern that FSIS will require establishments to monitor all parameters on an ongoing basis. One commenter recommended that FSIS explain that the critical operational parameters are related to initial validation, and that not all critical operational parameters need to be monitored on an ongoing basis.

Response: The current and previous versions of the guidance recognize that researchers may measure a number of parameters during a scientific study. However, not all of these are critical to the efficacy of the intervention studied. The establishment should document and explain any differences in its production process relative to any of the studies it used as supporting documentation. The current and previous versions of the guideline also state that establishments may only need to verify whether some of the critical operational parameters are working as intended during the initial validation period (*e.g.,* spatial configuration). The Agency does agree that in the cited example in the guidance it was unclear (ongoing verification activities on page 32), and FSIS has better delineated the activities that are conducted as part of monitoring vs. ongoing verification in the current guidance.

Agency Training and Implementation

Comment: Several commenters asked the Agency to identify who is going to train all of the FSIS inspectors. The commenters also said FSIS needs to ensure consistency in enforcing verification requirements. One commenter requested that FSIS issue formal instructions to field personnel on verifying that establishments meet validation requirements. The

commenter also recommended that FSIS provide IPP with on-line training.

Response: FSIS will provide instructions to IPP and EIAOs on how to verify validation requirements through FSIS Notices and Directives. The Agency also plans to provide necessary training to IPP and EIAOs.

Comment: One commenter asked that Agency outreach staff conduct regional sessions around the country to explain validation requirements to industry.

Response: FSIS will be holding webinars with the industry to communicate the recommendations in the final guidance document, clarify the regulations, and explain how FSIS will verify that establishments use both scientific support and in-plant data to validate that their systems, as designed and implemented, are working to address hazards.

Comment: One commenter said that large establishments should be given more than six months to assemble the necessary in-plant validation documentation. The commenter stated that not all establishments may produce all products under all HACCP plans during the six-month period. Another commenter said that small and very small plants should be given more than 3 months longer than large plants to assemble the necessary documentation.

Response: FSIS will implement its new verification activities by phasing them in based on establishment size. For large establishments, the Agency plans to wait until January 4, 2016, to start verifying that establishments meet all validation requirements, including maintaining in-plant validation data. Thus, large establishments will have approximately seven months to gather all necessary in-plant demonstration documents. FSIS believes this timeframe is adequate for large establishments to gather the necessary documentation because many of these establishments will be able to gather in-plant data from HACCP records that are already generated as part of the monitoring of critical limits or parameters of prerequisite programs. In addition, FSIS's implementation will correspond with establishments' annual reassessment. As part of the annual reassessment, establishments will review the data gathered during initial validation along with other documents gathered as part of the implementation of the HACCP system to evaluate the adequacy of the HACCP plan.

FSIS intends to begin verifying that small and very small establishments meet all validation requirements beginning on April 4, 2016. Therefore, these establishments will have approximately ten months to gather all necessary in-plant demonstration documents before FSIS will verify and enforce the second element of validation.

Comment: Two commenters asked for information on who was going to verify establishments meet validation requirements. These commenters asked whether FSIS would ''approve'' establishments' validation documentation. One commenter also asked whether the Public Health Information System (PHIS) is programmed to have validation checks recorded.

Response: FSIS does not approve an establishment's validation records. FSIS verifies compliance with regulatory requirements. IPP, including EIAOs, verify that establishments meet validation requirements, and FSIS will be providing instructions for performing verification for both types of personnel. Inspectors will verify that establishments meet validation requirements during performance of the Hazard Analysis Verification (HAV) tasks, and EIAOs will do a more in-depth verification of establishment records to verify that establishments meet the validation requirement during food safety assessments. All Agency verification activities are documented in the PHIS system. Routine verification of validation occurs during performance of the HAV task, and findings related to validation are documented in PHIS as part of that task.

Comment: One commenter expressed concern that the validation guidance will unnecessarily increase the number of non-compliance reports issued by FSIS inspection personnel.

Response: As explained in the May 2013 **Federal Register** notice, the guidance is meant for establishments and does not set new requirements. FSIS will ensure that IPP understand validation requirements and, as stated above, will issue necessary instructions to field personnel so that they are aware of the final guidance and share it with establishments. FSIS will also issue necessary instructions and training to field personnel for them to verify that establishments meet all validation requirements.

Next Steps

FSIS will implement the new verification activities in a phased approach based on establishment size. For large establishments, verification of the second element of validation will be delayed until January 4, 2016. For small and very small establishments, the Agency will delay implementation until April 4, 2016. After establishments have had time to collect the necessary in-plant validation data, IPP will verify that establishments meet validation requirements during HAV tasks, and EIAOs will do a more in-depth verification of establishment records to verify that establishments meet validation requirements during food safety assessments.

Until FSIS begins enforcing all validation requirements, FSIS inspection personnel will continue to issue noncompliance records (NRs) if an establishment lacks the required scientific or technical support for its HACCP system, if the scientific or technical support is inadequate, or if the establishment's control measures (CCPs or prerequisite programs) do not incorporate the parameters described in the scientific support, and the establishment does not have data to support the technical adequacy of the control measures. FSIS will continue to issue a Notice of Intended Enforcement if, taken together with other relevant findings, an establishment's scientific or technical support is inadequate, and the Agency can support a determination that the establishment's HACCP system is inadequate for any of the reasons provided in 9 CFR 417.6.

Moreover, if, in conducting a Food Safety Assessment (FSA), an EIAO finds that an establishment has not collected in-plant data to demonstrate that its HACCP process works as intended, the EIAO will note this finding in the FSA and inform the establishment. Until FSIS begins enforcing the in-plant data requirements, FSIS will not issue NRs or take enforcement actions based solely on a finding that an establishment lacks in-plant validation data.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

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To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, *Fax:* (202) 690–7442, *Email: program.intake@usda.gov*.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register*.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: May 8, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–11581 Filed 5–13–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0743; Airspace Docket No. 14–ASW–2]

Establishment of Class E Airspace; Cypress, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the effective date of a final rule published in the **Federal Register** of April 24, 2015, establishing Class E airspace at Dry Creek Airport, Cypress, TX.

DATES: *Effective date:* 0901 UTC, The effective date for the final rule published on April 24, 2015, is corrected from April 30, 2015, to June 25, 2015.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7740.

SUPPLEMENTARY INFORMATION:

History

The FAA published in the **Federal Register** a final rule establishing Class E airspace extending upward from 700 feet above the surface at Dry Creek Airport, Cypress, TX (79 FR 22894, April 24, 2015). After publication FAA found the effective date was incorrectly published as April 30, 2015, which does not ensure enough time for publication in the FAA's aeronautical database. The correct effective date is June 25, 2015. This action corrects the error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the effective date listed under **DATES** heading on Docket No. FAA 2015–0743, establishing Class E airspace at Dry Creek Airport, Cypress, TX, as published in the **Federal Register** of April 24, 2015, (79 FR 22894), FR Doc. 2015–09400, is corrected as follows:

On page 22894, column, 2, line 38, remove ''April 30, 2015'', and add in its place ''June 25, 2015''.

Issued in Washington, DC, on May 4, 2015.

Mark W. Bury,

Assistant Chief Counsel Regulations Division.

[FR Doc. 2015–11455 Filed 5–13–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0120]

RIN 1625–AA09

Drawbridge Operation Regulation; St. Marks River, Newport, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the drawbridge across the St. Marks River, mile 9.0, at Newport, Wakulla County, Florida. The drawbridge was replaced with a fixed bridge in 2001 and the operating regulation is no longer applicable or necessary.

DATES: This rule is effective May 14, 2015.

ADDRESSES: The docket for this final rule, [USCG–2015–0120] is available at *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 final rule. 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 Donna Gagliano, Coast Guard; telephone 504–671–2128, email *Donna.Gagliano@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this 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), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because the U.S. 98–SR 30 bridge, that once required draw operations in 33 CFR 117.327, was removed and replaced with a fixed bridge in 2001. Therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this effective in less than 30 days after publication in the **Federal**

Register. The bridge has been a fixed bridge for 14 years and this rule merely requires an administrative change to the **Federal Register**, in order to omit a regulatory requirement that is no longer applicable or necessary. The modification has already taken place and the removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

B. Basis and Purpose

The U.S. 98–SR 30 bridge across the St. Marks River, mile 9.0, was removed and replaced with a fixed bridge in 2001. It has come to the attention of the Coast Guard that the governing regulation for this drawbridge was never removed subsequent to the completion of the fixed bridge that replaced it. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation, 33 CFR 117.327, that pertains to the former drawbridge.

The purpose of this rule is to remove 33 CFR 117.327 that refers to the U.S. 98–SR 30 bridge, mile 9.0, from the Code of Federal Regulations because it governs a bridge that has been removed and replaced by a fixed bridge.

C. Discussion of Final Rule

The Coast Guard is amending the regulation in 33 CFR 117.327 by removing restrictions and the regulatory burden related to the draw operations for this bridge that is no longer in existence. The change removes 33 CFR 117.327, which is the regulation governing the U.S. 98–SR 30 bridge because the bridge has been removed from the waterway. This Final Rule seeks to update the CFR by removing language that governs the operation of the U.S. 98–SR 30 bridge, which in fact is no longer a drawbridge. This change does not affect waterway or land traffic.

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 or executive orders.

1. Regulatory Planning and Review

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

The Coast Guard does not consider this rule to be ''significant'' under that Order because it is an administrative change and does not affect the way vessels operate on the waterway.

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 will have no effect on small entities since this drawbridge has been removed and replaced with a fixed bridge and the regulation governing draw operations for this bridge is no longer applicable. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

3. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

4. 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 final rule under that Order and have determined that it does not have implications for federalism.

5. 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.

6. Unfunded Mandates Reform Act

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

7. 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.

8. 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.

9. 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 might disproportionately affect children.

10. 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.

11. 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.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the removal of regulation that is no longer necessary. This rule is categorically excluded, under figure 2–1, paragraph (32) (e), of the Instruction.

Under figure 2–1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

§ 117.327 [Removed]

■ 2. Remove § 117.327.

Dated: April 30, 2015.

Kevin S. Cook,

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

[FR Doc. 2015–11679 Filed 5–13–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0492]

RIN 1625–AA00

Safety Zone; Portland Dragon Boat Races, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Portland, OR. This safety zone is necessary to help ensure the safety of the maritime public during the annual marine event and will do so 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 June 15, 2015.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number [USCG–2014–0492]. 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.

You may submit comments identified by docket number USCG–2014–0492 using any one of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Kenneth 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
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

An interim rule was used for the establishment of the 2014 Portland Dragon Boat Races and was published as USCG–2014–0492 in the **Federal Register** on October 21, 2014 with a comment period that ended on November 20, 2014. Three comments were received and no requests for a public meeting were received by the Coast Guard. All three comments received were generally supportive of the event. The comments received and the answers to comments are covered in the ''Discussion of Comments, Changes and the Final Rule'' section, below.

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.

Regattas create the potential for complex navigation situations because of the large number of vessels that congregate near the event. In addition, the dragon boats involved in this regatta are not power driven vessels and consequently are limited in their ability to maneuver. This safety zone is necessary in order to ensure the safety of the maritime public in the proximity of marine event sites and reduce the risk of collision with the non-power driven vessels involved in the race.

C. Discussion of Comments, Changes and the Final Rule

As discussed above, in the ''Regulatory History and Information'' section, there were three comments received on the Temporary Interim Rule, published as USCG–2014–0492, for the 2014 Portland Dragon Boat Races. The first commenter was a cat and stated that they agreed that the safety of people is important. The Coast Guard agrees. The second commenter asked, ''What is a dragon boat and where can I find one?'' A dragon boat is a vessel propelled with paddles by a large crew and used for racing. Sources for these vessels are beyond the scope of this rulemaking. The third commenter recommended that the safety zone cover a larger area, based on the event's recent rise in popularity in the Portland area. The Coast Guard agrees that the Portland Dragon Boat Festival has seen recent increases in attendance and participation; however the racing route has remained unchanged. Given that race managers limit the number of participants on the water at any specific time, the Coast Guard has determined that the current safety zone is adequate to protect the interests of safe navigation.

D. Discussion of the Final Rule

The Final Rule finalizes the interim Safety Zone in the Thirteenth Coast Guard District without changes.

This regulated area is located along the western side of the Willamette River extending from Tom McCall Waterfront Park between the Hawthorne and Marquam Bridges, Portland, OR. The center span of the Hawthorne and Marquam bridges will be left open to allow commercial traffic through during the event. This event will take place from 8:00 a.m. to 6:00 p.m. on the first or second Saturday and Sunday of September. The zone is short in duration and will allow waterway users to enter or transit through the zone when deemed safe by the Captain of the Port or his designated representative.

E. 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 regulated area created by this rule will not significantly affect the maritime public because vessels may still coordinate their transit with the Coast Guard in the vicinity of the safety zone. Additionally, the Safety Zone which will be enforced is minimal in duration.

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 did not receive comments from the Small Business Administration on this rule.

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.

The rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The regulated area is limited in size; (ii) the official on-scene patrol may authorize access to the regulated area; (iii) the regulated area will affect a limited geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly; and (v) vessel traffic will be able to pass the safety zone with permission from the COTP representative.

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

3. Assistance for Small Entities

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

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 From Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of one safety zone around a marine event to protect the maritime public. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ For the reasons discussed in the preamble, the interim rule amending 33 CFR part 165 which was published at 79 FR 62829 on October 21, 2014 is adopted as a final rule without change.

Dated: April 17, 2015.

D.J. Travers,

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

[FR Doc. 2015–11018 Filed 5–13–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Edgecombe County, North Carolina, and Incorporated Areas Docket No.: FEMA–B–1202			
Bynum Mill Creek	At the Town Creek confluence	+48	Town of Macclesfield, Town of Pinetops, Unincorporated Areas of Edgecombe County.
	At the downstream side of North Carolina Highway 124	+83	
Bynum Mill Run	At the Bynum Mill Creek confluence	+66	Town of Macclesfield, Unincorporated Areas of Edgecombe County.
	Approximately 0.5 mile upstream of South 4th Street Extension (State Route 1112).	+95	
Cokey Swamp	At the Town Creek confluence	+54	Unincorporated Areas of Edgecombe County.
	Approximately 1.7 miles upstream of the confluence with Town Creek.	+55	
Deep Creek	Approximately 1.0 mile downstream of Dickens Road (State Route 1505).	+48	Town of Speed, Unincorporated Areas of Edgecombe County.
	At the Deep Creek Tributary confluence	+56	
East Tarboro Canal	Approximately 1,500 feet upstream of the Tar River confluence.	+45	Town of Tarboro, Unincorporated Areas of Edgecombe County.
	Approximately 590 feet upstream of the railroad	+56	
Fishing Creek	Approximately 500 feet upstream of the Maple Swamp confluence.	+49	Town of Leggett, Unincorporated Areas of Edgecombe County.
	Approximately 1.0 mile upstream of NC Highway 97	+57	
Leggett Canal	At the Swift Creek confluence	+58	Town of Leggett, Unincorporated Areas of Edgecombe County.
	Approximately 0.7 mile upstream of the Swift Creek confluence.	+58	
Longs Branch	At the upstream side of the railroad	+54	Town of Speed, Unincorporated Areas of Edgecombe County.
	Approximately 0.9 mile upstream of North Carolina Highway 122.	+63	
Maple Swamp	At the Fishing Creek confluence	+49	Unincorporated Areas of Edgecombe County.
	Approximately 0.6 mile downstream of Bethlehem Church Road (State Route 1431).	+59	
Moccasin Swamp	At the Swift Creek confluence	+73	Unincorporated Areas of Edgecombe County.
	Approximately 1.0 mile upstream of the Swift Creek confluence.	+74	
Moore Swamp	At the Maple Swamp confluence	+56	Unincorporated Areas of Edgecombe County.
	Approximately 1.1 miles upstream of the Maple Swamp confluence.	+58	
Savage Mill Run	Approximately 250 feet downstream of North Carolina Highway 122.	+56	Town of Speed, Unincorporated Areas of Edgecombe County.
	Approximately 1.2 miles upstream of North Carolina Highway 122.	+62	
Swift Creek	Approximately 300 feet upstream of West Logsboro Road	+51	Town of Leggett, Unincorporated Areas of Edgecombe County.
	Approximately 0.6 mile downstream of Seven Bridges Road (State Route 1404).	+78	
Town Creek	Approximately 2.0 miles upstream of Colonial Road (State Route 1601).	+40	Town of Pinetops, Unincorporated Areas of Edgecombe County.
	Approximately 140 feet upstream of North Carolina Highway 43.	+57	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
White Oak Swamp	Approximately 1,500 feet downstream of White Oak Swamp Road (State Route 1428).	+62	Unincorporated Areas of Edgecombe County
	Approximately 1,900 feet upstream of White Oak Swamp Road (SR1428).	+65	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter

ADDRESSES

Town of Leggett

Maps are available for inspection at Leggett Town Hall, 63 Draughn Road, Tarboro, NC 27886.

Town of Macclesfield

Maps are available for inspection at Town Hall, 203 West Green Street, Macclesfield, NC 27852.

Town of Pinetops

Maps are available for inspection at the Town Hall, 101 East Hamlet Street, Pinetops, NC 27864.

Town of Speed

Maps are available for inspection at the Town Hall, 200 Railroad Street, Speed, NC 27881.

Town of Tarboro

Maps are available for inspection at the Town Hall, 500 Main Street, Tarboro, NC 27886.

Unincorporated Areas of Edgecombe County

Maps are available for inspection at the Edgecombe County Planning Department, 201 Saint Andrews Street, Room 205, Tarboro, NC 27886

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Halifax County, North Carolina Docket No.: FEMA–B–1198				
North Carolina	Unincorporated Areas of Halifax County.	Fishing Creek	Approximately 1.1 miles upstream of the Fishing Creek Tributary 2 confluence.	+59
			Approximately 1.0 mile downstream of Grammon Road (State Route 1429).	+63

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Halifax County

Maps are available for inspection at the Halifax County Planning Department, 15 West Pittsylvania Street, Halifax, NC 27839.

Dated: April 22, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–11584 Filed 5–13–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2015–0001]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Dated: April 22, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Pulaski County, Arkansas, and Incorporated Areas Docket Nos.: FEMA–B–7756 and FEMA–B–1053			
Bayou Meto	Approximately 3.48 miles downstream of Southeastern Avenue.	+243	City of Jacksonville, Unincorporated Areas of Pulaski County.
	Approximately 3.87 miles downstream of Old Tom Box Road.	+263	
	Just upstream of Davis Ranch Road	+320	
Bayou Two Prairie	At the Highway 5 intersection (county line)	+280	Unincorporated Areas of Pulaski County.
	Approximately 1,050 feet upstream of Private Road	+314	
Blue Branch	At the Bayou Two Prairie confluence	+286	Unincorporated Areas of Pulaski County.
	Approximately 2,180 feet upstream of the Highway 89 intersection.	+318	
Bridge Drive	At the Bayou Meto confluence	+266	Unincorporated Areas of Pulaski County.
	Approximately 1.35 miles upstream of Bridge Field Drive	+271	
Ferndale Creek	At the Little Maumelle River confluence	+362	Unincorporated Areas of Pulaski County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
	Approximately 1,300 feet upstream of Ferndale Road (county line).	+453	
Five Mile Creek	At the Bayou Meto confluence	+248	Unincorporated Areas of Pulaski County.
	Just upstream of Rixie Road	+252	
Fletcher Creek	At the Little Maumelle River confluence	+328	Unincorporated Areas of Pulaski County.
	Approximately 3,200 feet upstream of Walnut Grove Trail	+429	
Glade Branch	Approximately 580 feet upstream of Highway 67/167	+266	Unincorporated Areas of Pulaski County.
	Approximately 6,300 feet upstream of the Roland Road intersection.	+353	
Good Earth Drain	At the Taylor Loop Creek confluence	+280	City of Little Rock.
	At the Taylor Loop Creek divergence	+285	
Isom Creek	At the Taylor Loop Creek confluence	+265	City of Little Rock, Unincorporated Areas of Pulaski County.
	Approximately 100 feet upstream of Russ Street	+345	
Jacks Bayou	Approximately 500 feet downstream of the Union Pacific Railroad intersection (county line).	+252	City of Jacksonville, Unincorporated Areas of Pulaski County.
	Approximately 1,200 feet upstream of Peters Road	+283	
Jacks Bayou Tributary 10	At the Jacks Bayou confluence	+271	Unincorporated Areas of Pulaski County.
	Approximately 1,800 feet upstream of Hercules Drive	+279	
Kinley Creek	Approximately 8,010 feet downstream from the Garrison Road intersection.	+349	Unincorporated Areas of Pulaski County.
	Approximately 1,130 feet upstream from the Garrison Road intersection.	+424	
Little Maumelle River	Approximately 2,570 feet downstream from the Arkansas River confluence.	+262	Unincorporated Areas of Pulaski County.
	Approximately 5,300 feet upstream from the Carnation Lane intersection.	+561	
Neal Creek	At the Kinley Creek confluence	+380	Unincorporated Areas of Pulaski County.
	Approximately 7,200 feet upstream of the Condor Road intersection.	+514	
Nowlin Creek	Approximately 25,098 feet upstream from the Goodson Road intersection.	+495	Unincorporated Areas of Pulaski County.
	Approximately 25,348 feet upstream from the Goodson Road intersection.	+497	
South Loop	Approximately 1,358 feet upstream from the Taylor Loop Creek confluence.	+266	Unincorporated Areas of Pulaski County.
	Approximately 1,801 feet downstream from the Taylor Loop Creek confluence.	+299	
South Split	At the South Loop confluence	+280	Unincorporated Areas of Pulaski County.
	Approximately 194 feet downstream from the South Loop confluence.	+290	
Taylor Loop Creek	Approximately 475 feet downstream from the Railroad intersection.	+266	Unincorporated Areas of Pulaski County.
	Approximately 1,451 feet downstream from the Jennifer Drive intersection.	+430	
Tributary 4 to Little Maumelle River.	At the Little Maumelle River confluence	+240	City of Little Rock, Unincorporated Areas of Pulaski County.
	At the Cantrell Road intersection	+301	
Tributary 5 to Little Maumelle River.	At the Little Maumelle River confluence	+266	Unincorporated Areas of Pulaski County.
	Approximately 120 feet downstream of Guenther Road	+282	
Tributary 6 to Fletcher Creek	At the Fletcher Creek confluence	+366	Unincorporated Areas of Pulaski County.
	Approximately 6,150 feet upstream of the Walnut Grove Road intersection.	+427	
Tributary 7 to Little Maumelle River.	Approximately 3,275 feet downstream from the Ferndale Road intersection.	+316	Unincorporated Areas of Pulaski County.
	Approximately 12,163 feet upstream from the Ferndale Road intersection.	+455	
Tributary 8 to Fletcher Creek	Approximately 233 feet upstream from the Fletcher Creek confluence.	+404	Unincorporated Areas of Pulaski County.
	Approximately 3,488 feet upstream from the Autumn Blaze Trail intersection.	+509	
Tributary 9 to Little Maumelle River.	Approximately 748 feet upstream from the Little Maumelle River confluence.	+330	Unincorporated Areas of Pulaski County.
	Approximately 1,160 feet upstream from the Garrison Road intersection.	+512	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
White Oak Branch	Approximately 123 feet upstream from the Highway 5 intersection.	+288	Unincorporated Areas of Pulaski County.
	Approximately 6,051 feet upstream from the Mount Pleasant intersection.	+329	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Jacksonville

Maps are available for inspection at the City Engineer's Office, One Municipal Drive, Jacksonville, AR 72076.

City of Little Rock

Maps are available for inspection at the Department of Public Works, 701 West Markham Street, Little Rock, AR 72201.

Unincorporated Areas of Pulaski County

Maps are available for inspection at the Pulaski County Road and Bridge Department, 3200 Brown Street, Little Rock, AR 72204.

Muskegon County, MI, and Incorporated Areas
Docket No.: FEMA–B–1222

Lake Michigan	Entire shoreline within Community	+584	Township of Fruitland, Township of Laketon.
North Channel	At the Chesapeake and Ohio Railway	+584	City of Muskegon.
Musekgon River (flooding effects from Muskegon Lake).	Approximately 1.3 miles upstream of the Chesapeake and Ohio Railway.	+584	Township of Muskegon.
White Lake	Entire Shoreline within community	+584	Township of Fruitland, Township of Whitehall.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

ADDRESSES

City of Muskegon

Maps are available for inspection at City Hall, 933 Terrace Street, Muskegon, MI 49440.

Township of Fruitland

Maps are available for inspection at Fruitland Township Hall, 4545 Nestrom Road, Whitehall, MI 49461.

Township of Laketon

Maps are available for inspection at Laketon Township Hall, 2735 West Giles Road, Muskegon, MI 49445.

Township of Muskegon

Maps are available for inspection at Muskegon Township Hall, 1990 Apple Avenue, Muskegon, MI 49442.

Township of Whitehall

Maps are available for inspection at Township Hall, 7644 Durham Road, Whitehall, MI 49461.

[FR Doc. 2015–11585 Filed 5–13–15; 8:45 am]
BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[AU Docket No. 15–3; DA 15–452]

Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 98

AGENCY: Federal Communications Commission.

ACTION: Final rule; requirements and procedures.

SUMMARY: This document announces the procedures, upfront payment amounts, and minimum opening bids for the upcoming auction of certain FM broadcast construction permits. This document is intended to familiarize prospective applicants with the procedures and other requirements for participation in Auction 98, as well as provide an overview of the post-auction application and payment processes.

DATES: Applications to participate in Auction 98 must be filed prior to 6:00 p.m. Eastern Time (ET) on May 28, 2015. Bidding in Auction 98 is scheduled to begin on July 23, 2015.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal and general auction questions: Lynne Milne or Howard Davenport at (202) 418–0660; For auction process and procedures: Jeff Crooks or Sue Sterner at (202) 418–0660. *Media Bureau, Audio Division:* For licensing information, service rule and other questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 98 Procedures Announcement* released on April 22, 2015. The complete texts of the *Auction 98 Procedures Announcement,* including its attachment and related Commission documents, are available for public inspection and copying from the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 during the regular business hours of the FCC Reference Information Center. The *Auction 98 Procedures Announcement* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/98/,* or by using the search function for AU Docket No. 15–3 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. General Information

A. Introduction

1. On March 16, 2015, the Wireless Telecommunications Bureau and the Media Bureau (collectively, the Bureaus) released a public notice seeking comment on specific competitive bidding procedures to be used in Auction 98. The Bureaus received comments from four individuals in response to the *Auction 98 Request for Comment,* 80 FR 15715, March 25, 2015.

i. Construction Permits in Auction 98

2. Auction 98 will offer 131 construction permits in the FM broadcast service, as listed in Attachment A of the *Auction 98 Procedures* Announcement. These construction permits are for vacant FM allotments, and are designated for use in the indicated communities.

3. Applicants may apply for any vacant FM allotment listed in Attachment A to the *Auction 98 Procedures Announcement.* When two or more short-form applications (FCC Form 175) are submitted specifying the same FM allotment in Auction 98, mutual exclusivity exists for auction purposes and that construction permit must be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application but fails to become a qualified bidder for any reason, including a failure to timely submit an upfront payment, will retain its status as an Auction 98 applicant and will remain subject to the Commission's rules prohibiting certain communications, 47 CFR 1.2105(c) and 73.5002(d).

4. Attachment A of the *Auction 98 Procedures Announcement* lists the reference coordinates for each vacant FM allotment offered in this auction. An applicant for FM stations has the option to submit a set of coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which they intend to bid.

B. Rules and Disclaimers

i. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's FM broadcast service rules contained in 47 CFR 73.201–73.333 and 73.1001–73.5009. Prospective bidders must also be familiar with the broadcast auction and competitive bidding rules contained in 47 CFR 1.2101–1.2112 and 73.5000–73.5009. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 98 Procedures Announcement* and the public notices and orders referenced in it.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auction-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.*

ii. Prohibited Communications and Compliance With Antitrust Laws

7. 47 CFR 1.2105(c) prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to 47 CFR 1.2105

8. The prohibition on certain communications specified in 47 CFR 1.2105(c) will apply to any applicant that submits a short-form application seeking to participate in a Commission auction for construction permits in the same geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. For the FM service, the geographic license area is the market designation, which is the particular vacant FM allotment (*e.g.,* Hermitage, Arkansas, Channel 300A, MM–FM979–A). In Auction 98, this rule would apply to applicants designating any of the same FM allotments on the short-form application.

9. For purposes of this prohibition on certain communications, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For example, where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies.

10. 47 CFR 1.2105(c)(4) allows a non-controlling interest holder to obtain an interest in more than one competing applicant without violating 47 CFR 1.2105(c) provided specified conditions

are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to a controlling interest holder.

11. Auction 98 applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (*e.g.,* law firm, engineering firm or consulting firm), a violation could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

12. 47 CFR 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

c. Prohibited Communications

13. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

14. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations, including capital calls or requests for additional funds in support of bids or bidding strategies. An applicant also may not use the Commission's bidding system to disclose its bidding strategy. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.2105(c) violation. Similarly, an applicant's public statement of intent not to participate in Auction 98 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post auction market structures may violate 47 CFR 1.2105(c).

d. Disclosure of Bidding Agreements and Arrangements

15. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.

16. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

17. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

e. 47 CFR 1.2105(c) Certification

18. By electronically submitting a short-form application, each applicant in Auction 98 certifies its compliance with 47 CFR 1.2105(c) and 73.5002. In particular, an applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular construction permits on which it will or will not bid. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty To Report Prohibited Communications

19. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

20. In addition, 47 CFR 1.65 requires an applicant to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii). 47 CFR 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five business days of a significant occurrence, or to amend its short-form application no more than five business days after the applicant becomes aware of the need for amendment.

g. Procedure for Reporting Prohibited Communications

21. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that

would allow such materials to be made available for public inspection.

22. 47 CFR 1.2105(c) requires a party to file only a single report concerning a prohibited communication and to file that report with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Margaret W. Wiener at the following email address: *auction98@fcc.gov.* If a party chooses instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Room 6423, Washington, DC 20554.

23. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

h. Winning Bidders Must Disclose Terms of Agreements

24. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. This requirement applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

25. A summary listing of documents issued by the Commission and the Bureaus addressing the application of 47 CFR 1.2105(c) may be found in Attachment E of the *Auction 98 Procedures Announcement.* These documents are available on the Commission's auction Web page at *http://wireless.fcc.gov/auctions/prohibited_communications.*

j. Antitrust Laws

26. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

27. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

iii. Due Diligence

28. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a construction permit, it will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. These conditions include, but are not limited to, the condition that FCC licenses and other authorizations (whether awarded through competitive bidding or otherwise) are subject to the authority of the FCC, under the Communications Act of 1934, as amended, to modification through rulemaking and adjudicative proceedings. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

29. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder to review all underlying Commission orders, such as the specific order amending the FM Table of Allotments and allotting the FM channel(s) on which it plans to bid. An order adopted in an FM allotment rulemaking proceeding may include information unique to the allotment such as site restrictions or expense reimbursement requirements. Each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 98 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act at 47 CFR 1.1301–1.1319.

30. Each applicant should conduct its own research prior to Auction 98 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction. Each participant in Auction 98 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 98 Procedures Announcement* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

31. Pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission—including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 98. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction.

32. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 98. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own

assessment of the relevance and importance of information gathered as part of its due diligence efforts.

33. Applicants may research the Media Bureau's licensing database in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records are contained in the Consolidated Database System (CDBS) and may be researched on the Internet from *http://www.fcc.gov/encyclopedia/media-bureau-filing-systems-and-databases.*

34. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

iv. Use of FCC Auction System

35. Bidders will be able to participate in Auction 98 over the Internet using the Commission's web-based FCC Auction System. The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

v. Environmental Review Requirements

36. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a broadcast facility is a federal action, and the permittee or licensee must comply with the Commission's environmental rules at 47 CFR 1.1301–1.1319 for each such facility.

C. Auction Specifics

i. Bidding Methodology

37. The bidding methodology for Auction 98 will be a simultaneous multiple round format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

ii. Pre-Auction Dates and Deadlines

38. The following dates and deadlines apply: (1) The Auction Tutorial will be available (via Internet) on May 18, 2015; (2) the Short-Form Application (FCC Form 175) Filing Window opens on May 18, 2015 (12:00 noon ET); (3) the Short-Form Application (FCC Form 175) Filing Window deadline ends on May 28, 2015 (prior to 6:00 p.m. ET); (4) the Upfront Payments (via wire transfer) are due by June 29, 2015 (6:00 p.m. ET); and (5) the Mock Auction will be held on July 20, 2015.

iii. Requirements for Participation

39. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on May 28, 2015, following the electronic filing procedures set forth in Attachment B to the *Auction 98 Procedures Announcement;* (2) Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on June 29, 2015, following the procedures and instructions set forth in Attachment C to the *Auctions 98 Procedures Announcement;* and (3) Comply with all provisions outlined in the *Auction 98 Procedures Announcement* and applicable Commission rules.

II. Short-Form Application (FCC Form 175) Requirements

A. General Information Regarding Short-Form Applications

40. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment. In the second phase of the process, each winning bidder must file a more comprehensive long-form application.

41. Every entity and individual seeking a construction permit available in Auction 98 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on May 28, 2015, following the procedures prescribed in Attachment B of the *Auction 98 Procedures Announcement.* If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's rules against prohibited communications beginning at the deadline for filing.

42. Every applicant bears full responsibility for submitting an accurate, complete and timely short-form application. An applicant must certify on its short-form application under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a license. Each applicant should read carefully the instructions set forth in Attachment B of the *Auction 98 Procedures Announcement* and should consult the Commission's rules to ensure that all the information required is included within its short-form application.

43. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

44. Submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. Permit Selection

45. An applicant must select the construction permits on which it wants to bid from the Eligible Permits list on its short-form application. To assist in identifying construction permits of interest that will be available in Auction 98, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the Eligible Permits list. Selections for one or more of the filter criteria can be made and the system will produce a list of construction permits satisfying the specified criteria. Any or all of the construction permits in the filtered results may be selected. Applicants will also be able to select construction permits from one set of filtered results and then filter on different criteria to select additional construction permits.

46. Applicants interested in participating in Auction 98 must have selected construction permit(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their construction permit selections before the deadline for submitting short-form applications. Construction permit selections cannot be changed after the short-form application filing deadline. The FCC Auction System will not accept bids on construction permits that were not selected on the applicant's short-form application.

C. New Entrant Bidding Credit

47. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. In Auction 98, the applicant's attributable interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing deadline. An applicant intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline. Each applicant is reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately (no less than five business days after the event occurs). In this context, each applicant has a duty to continuously maintain the accuracy of information submitted in its auction application. Moreover, an applicant cannot qualify for a bidding credit, or upgrade a previously-claimed bidding credit, based on an ownership or positional change occurring after the short-form application filing deadline.

48. Under traditional broadcast attribution rules, including 47 CFR 73.3555 Note 2, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) Any owner of 5 percent or more of the voting stock of a corporate bidder; (3) All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) All members of a limited liability company, unless sufficiently insulated.

49. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.

50. In the *New Entrant Bidding Credit Reconsideration Order,* 64 FR 44856, Aug. 18, 1999, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

51. In the *Diversity Order,* 73 FR 28400, May 16, 2008, the Commission relaxed the equity/debt plus (EDP) attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities, 47 CFR 73.3555 Note 2(i). Consistent with a 2011 court decision, the relaxed equity and/or debt plus attribution standard for eligible entities as the basis for the New Entrant Bidding Credit will be unavailable in Auction 98.

52. A medium of mass communications is defined in 47 CFR 73.5008(b). Full power noncommercial educational stations, on both reserved and non-reserved channels, are included among media of mass communications as defined in 47 CFR 73.5008(b). Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the applicant's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. Further, any bidder asserting eligibility for new entrant bidding credit must have de facto as well as de jure control of the entity claiming the bidding credit.

D. Application Requirements

53. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, an applicant seeking a New Entrant Bidding Credit is required to establish on its short-form application that it satisfies the eligibility requirements to qualify for the bidding credit. In such case, a certification under penalty of perjury must be provided in completing the short-form application. An applicant claiming that it qualifies for a 35 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

i. Bidding Credits

54. Applicants that qualify for the New Entrant Bidding Credit, as specified in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008. A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the

winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast permit proposed in the auction, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities. For purposes of determining whether a broadcast permit offered in this auction is in the same area as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the allotment reference coordinates, not any applicant-specified preferred site coordinates.

55. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

E. Ownership Disclosure Requirements

56. For purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

57. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction using the FCC Auction System), will automatically be entered into its short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

F. Provisions Regarding Former and Current Defaulters

58. Current defaulters or delinquents are not eligible to participate in Auction 98, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter or a former delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

59. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

60. Applicants are encouraged to review the Bureaus' previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Failure to comply, however, with the terms of a demand letter in the time period specified may render the subject debt delinquent, notwithstanding rules generally permitting late payment. Parties are encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

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

62. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its

eligibility to participate in an auction or of its upfront payment obligation.

63. Moreover, prospective applicants in Auction 98 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Further, an applicant that has its long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

G. Optional Applicant Status Identification

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

H. Noncommercial Educational Status Election

65. If an FCC Form 175 filed during the Auction 98 filing window identifying the application's proposed station as noncommercial educational (NCE) is mutually exclusive with any application filed during that window for a commercial station, the NCE application will be returned as unacceptable for filing. Auction applications selecting the same FM station construction permit are considered mutually exclusive. Each prospective applicant in this auction should consider carefully if it wishes to propose NCE operation for any FM station acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline.

I. Minor Modifications to Short-Form Applications

66. After the deadline for filing initial applications, an Auction 98 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (*e.g.,* change of construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change the identification of the application's proposed facilities as noncommercial educational) after the initial application filing deadline. Thus, any change in control of an applicant, resulting from a merger, for example, will be considered a major modification, and the application will consequently be dismissed. If an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.2105(c) until the down payment deadline, which will be established after the auction closes.

67. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.

68. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (*e.g.,* changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and the identification of the application's proposed facilities as noncommercial educational.

69. Any letter describing changes to an applicant's short-form application must be submitted by email to *auction98@fcc.gov.* The email summarizing the changes must include a subject or caption referring to Auction 98 and the name of the applicant, for example, Re: Changes to Auction 98 Short-Form Application of ABC Corp. The Bureaus request that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418–0660.

70. Any application amendment and related statements of fact must be certified by an authorized representative of the applicant having authority to bind the applicant.

71. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 98.

J. Maintaining Current Information in Short-Form Applications

72. 47 CFR 1.65 and 1.2105(b) require an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five business days of a significant occurrence, or to amend a short-form application no more than five business days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant's amendment. After the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to 47 CFR 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by email to *auction98@fcc.gov.* This email must include a subject or caption referring to Auction 98 and the name of the applicant. The Bureaus request that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

III. Pre-Auction Procedures

A. Online Auction Tutorial—Available May 18, 2015

73. By Monday, May 18, 2015, an interactive auction tutorial will be available on the Auction 98 Web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

74. The auction tutorial will be accessible through a Web browser with Adobe Flash Player from the FCC's Auction 98 Web page at *http://wireless.fcc.gov/auctions/98/* through an Auction Tutorial link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the *Auction 98 Procedures Announcement.*

B. Short-Form Applications—Due Prior to 6:00 p.m. ET on May 28, 2015

75. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment B to the *Auction 98 Procedures Announcement* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on May 28, 2015. Late applications will not be accepted. No application fee is required, but an applicant must submit a timely and sufficient upfront payment to be eligible to bid.

76. Applications may generally be filed at any time beginning at noon ET on May 18, 2015, until the filing window closes at 6:00 p.m. ET on May 28, 2015. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on May 28, 2015.

77. An applicant must always click on the SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B to the *Auction 98 Procedures Announcement.* FCC Auctions Technical Support is available at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

78. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. That public notice will include the deadline for resubmitting corrected applications.

79. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive applications proposing commercial stations will proceed to auction.

80. After the application filing deadline on May 28, 2015, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (*e.g.,* change construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change identification of the application's proposed facilities as NCE).

81. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by email to *auction98@fcc.gov.*

D. Upfront Payments—Due June 29, 2015

82. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the *Auction 98 Procedures Announcement* and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on June 29, 2015.

i. Making Upfront Payments by Wire Transfer

83. An applicant must initiate its wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's auction payment lockbox bank, the U.S. Bank in St. Louis, Missouri. Wire transfer payments must be received before 6:00 p.m. ET on June 29, 2015. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

84. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418–4232. On the fax cover sheet, write Wire Transfer—Auction Payment for Auction 98. In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 98 before the deadline.

85. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418–0578, or

alternatively, Theresa Meeks at (202) 418–2945.

86. All payments must be made in U.S. dollars. All payments must be made by wire transfer. Upfront payments for Auction 98 go to a lockbox number different from the lockboxes used in previous FCC auctions. Failure to deliver a sufficient upfront payment as instructed in the *Auction 98 Procedures Announcement* by the deadline on June 29, 2015 will result in dismissal of the short-form application and disqualification from participation in the auction. Any applicant that submits a short-form application but fails to timely submit an upfront payment will retain its status as an Auction 98 applicant and will remain subject to 47 CFR 12105(c) and 73.5002(d), but, having purchased no bidding eligibility, will not be eligible to bid.

ii. FCC Form 159

87. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C of the *Auction 98 Procedures Announcement.* An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but it must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

88. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the construction permits on which it will bid. The amount of the upfront payment will determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. (A provisionally winning bid is a bid that would become a final winning bid if the auction were to close after a specific round.) The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

89. The specific upfront payment amounts and bidding units for each construction permit in Auction 98 are set forth in Attachment A of the *Auction 98 Procedures Announcement.*

90. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

91. 47 CFR 1.2106(a) requires that an applicant that is a former defaulter must submit an upfront payment 50 percent greater than other applicants. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, the applicant will not be eligible to participate in bidding. This applicant will retain its status as an applicant in Auction 98 and will remain subject to 47 CFR 1.2105(c) and 73.5002(d).

E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

92. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information specified in the *Auction 98 Procedures* Announcement be submitted. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Instructions for submission of refund wire transfer information by fax were provided in the *Auction 98 Procedures Announcement.* All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise.

F. Auction Registration

93. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

94. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the FCC Auction System Bidder's Guide, and the Auction Bidder Line telephone number.

95. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Thursday, July 16, 2015, a qualified bidder must call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration materials.

96. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of

these items, call Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (TTY).

G. Remote Electronic Bidding

97. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the FCC Auction System Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 98.

H. Mock Auction—July 20, 2015

98. All qualified bidders will be eligible to participate in a mock auction on Monday, July 20, 2015. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureaus strongly recommend that all bidders participate in the mock auction. Details will be announced by public notice.

IV. Auction

99. The first round of bidding for Auction 98 will begin on Thursday, July 23, 2015. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

100. In Auction 98, all construction permits will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

ii. Eligibility and Activity Rules

101. The Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 98. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A to the *Auction 98 Procedures Announcement.* Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

102. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new and provisionally winning bids from the previous round.

103. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iii. Auction Stages

104. In Auction 98, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 80 percent of its current eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility on Stage Two.

105. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

106. When the Bureaus move the auction from Stage One to Stage Two, they will first alert bidders by announcement in the bidding system. The stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One. The Bureaus have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant.

iv. Stage Transitions

107. Auction 98 will start in Stage One. The Bureaus will regulate the pace of the auction by announcement. The Bureaus retain the discretion to transition the auction to Stage Two, to add an additional stage with a higher

activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of construction permits (as measured in bidding units) on which there are new bids.

v. Activity Rule Waivers

108. Each qualified bidder in the auction will be provided with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

109. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

110. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

111. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

vi. Auction Stopping Rules

112. For Auction 98, the Bureaus will employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops simultaneously on every construction permit. More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

113. The Bureaus also adopted alternative versions of the simultaneous stopping rule for Auction 98. Option 1: The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. Option 2: The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bids on any construction permit that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an FCC-held construction permit) would not keep the auction open under this modified stopping rule. Option 3: The auction would close using a modified version of the simultaneous stopping rule that combines options 1 and 2 above. Option 4: The auction would end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close. Option 5: The auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

114. The Bureaus proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus retained the discretion to exercise any of these options with or without prior announcement during the auction.

vii. Auction Delay, Suspension, or Cancellation

115. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus will exercise this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

116. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

117. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may

change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

118. The Bureaus did not establish reserve prices for the construction permits in Auction 98. The Bureaus did, however, establish minimum opening bids for each construction permit in this auction. After further consideration, the Bureaus adjusted the minimum opening bid amount for one construction permit, MM–FM1076–A, at Maysville, Georgia, in response to concerns raised by a commenter. The Bureaus made corresponding changes to the upfront payment amount and the bidding units associated with this construction permit. The specific minimum opening bid amount for each construction permit available in Auction 98 is specified in Attachment A of the *Auction 98 Procedures Announcement*.

iii. Bid Amounts

119. In each round of Auction 98, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for that permit.

120. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid amount will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent. Thus, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded.

121. The eight additional bid amounts will be calculated using the minimum acceptable bid amount and a bid increment percentage, which will be 5 percent for the beginning of Auction 98. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. For Auction 98, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. The Bureaus will round the results of these calculations using the standard rounding procedures for auctions. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a $10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is $12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $10,000 above the provisionally winning bid. If the Bureaus exercise this discretion to retain the discretion to change bid amounts if they determine that circumstances so dictate, it will alert bidders by announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

122. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Provisionally winning bids count toward activity for purposes of the activity rule.

123. The Bureaus will use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.,* tied bids). Specifically, the FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

v. Bidding

124. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 98. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders must allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

125. A bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

126. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

127. In each round, an eligible bidder will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts if the bidder has sufficient eligibility to place a bid on the particular construction permit. For each construction permit, the FCC Auction System will list the acceptable bid amounts in a drop-down box.

Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows text files containing bid information to be uploaded.

128. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined.

129. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

vi. Bid Removal and Bid Withdrawal

130. In Auction 98, each bidder will have the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

131. In Auction 98, the Bureaus will prohibit bidders from withdrawing any bids after the round in which the bids were placed has closed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

vii. Round Results

132. Reports reflecting bidders' identities for Auction 98 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

133. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and will post the reports for public access.

viii. Auction Announcements

134. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

135. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 301).

A. Down Payments

136. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 98 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

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

C. Long-Form Application (FCC Form 301)

138. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly-completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station), and required exhibits for each construction permit won through Auction 98. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. 47 CFR 1.2107(c) requires that a winning bidder for a commercial broadcast station submit an application filing fee with its post-auction long-form application. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Default and Disqualification

139. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment, equal to the difference between the amount of the Auction 98 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same allotment is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The percentage of the applicable bid to be assessed as an additional payment for defaults in Auction 98 was established at twenty percent of the applicable bid.

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

VI. Procedural Matters

141. *Paperwork Reduction Act Analysis.* This document contains no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

142. *Congressional Review Act.* Consistent with the requirements of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission will send a copy of the *Auction 98 Procedures Announcement* to Congress and the Government Accountability Office.

143. *Supplemental Regulatory Flexibility Analysis.* Consistent with the Regulatory Flexibility Act of 1980, as amended (RFA), as well as the Commission's obligations to small businesses under sections 309(j)(3)(B)

and 309(j)(4)(D) of the Communications Act of 1934, as amended, the *Auction 98 Request for Comment* included an additional analysis to supplement the Commission's Initial and Final Regulatory Flexibility analyses completed in the underlying notices of proposed rulemaking and rulemaking orders, including the *Broadcast First Report and Order* and associated orders which are hereby incorporated by reference. The Commission sought written public comment on the proposals in the *Auction 98 Request for Comment,* including comment on the supplemental analysis. None of the filed comments directly responded to the supplemental analysis in the *Auction 98 Request for Comment.* This supplemental analysis conforms to the RFA.

144. *Need for, and Objectives of, the Proposed Competitive Bidding Procedures.* The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and will conduct Auction 98. The Commission has directed the Bureaus, under delegated authority, to promulgate the procedures, terms, and conditions of Commission auctions after seeking comment on a variety of auction-specific procedures prior to the start of each auction. The *Auction 98 Procedures Announcement* establishes the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits. As stated in the *Auction 98 Request for Comment,* this process is intended to implement the Commission's duty under section 309(j)(3)(e)(i) of the Communications Act of 1934, as amended, to provide notice and adequate time for potential applicants, including small businesses, to comment on some proposed auction procedures. The Bureaus received four comments, with none directly addressing the Supplemental Regulatory Flexibility Analysis (SRFA) in the *Auction 98 Request for Comment.* The objective of the *Auction 98 Procedures Announcement* is to provide an overview of, and guidance on compliance with, the procedures, terms, and conditions governing Auction 98 and the post-auction application and payment processes for all potential Auction 98 participants, including small businesses.

145. Under the procedures adopted to govern the conduct of Auction 98, each auction applicant must submit electronically through the FCC Auction System a complete, accurate and timely FCC Form 175, submit a timely and sufficient upfront payment, and use the FCC Auction System to place any bids. Auction 98 will be conducted using a simultaneous multiple-round auction format. Each bidder must place bids within bidding eligibility and activity requirements using minimum acceptable bid amounts and bid increments, and subject to bid removal procedures and a simultaneous stopping rule. In addition, any winning bidder that defaults or is disqualified after the auction must submit an additional default payment of 20 percent of the applicable bid under 47 CFR 1.2104(g)(2).

146. *Summary of Significant Issues Raised by Public Comments in Response to the SRFA.* There were no comments directly addressing the supplemental analysis in the *Auction 98 Request for Comment,* and thus specific alternative procedures were not raised for consideration by the Bureaus. Nonetheless, the Bureaus carefully considered the potential impact of the auction procedures proposed in the SRFA on all potential participants, including small entities.

147. *Description and Estimate of the Number of Small Entities to which Specified Auction 98 Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by rules proposed in that rulemaking proceeding, if adopted. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Moreover, the SBA has created a small business size standard of $38.5 million or less in annual receipts for establishments primarily engaged in broadcasting aural programs. The size data provided by the SBA, however, does not enable the Bureaus to make a meaningful estimate of the number of small entities who may apply to participate in Auction 98.

148. The procedures, terms, and conditions governing Auction 98 in the *Auction 98 Procedures Announcement* will affect directly all applicants participating in Auction 98, including small businesses. The number of entities which may apply to participate in Auction 98 is unknown. However, the procedures, terms, and conditions described in this Public Notice will affect the same individuals and entities set forth in paragraphs 51 through 53 of the supplemental analysis undertaken in the *Auction 98 Request for Comment.* In that *Request for Comment,* the Bureaus estimated that the number of applicants for Auction 98 may range from approximately 175 to 260 based on the numbers of applicants who filed short-form applications to participate in previous auctions of FM radio station construction permits (exclusive of closed auctions). However, the Bureaus also recognized that the number of auction applicants in Auction 98 could vary significantly as an applicant's decision to participate at auction may be affected by factors outside of the Commission's knowledge or control.

149. The Bureaus are unable to accurately ascertain the estimated number of small businesses that will participate in the Auction 98 based on the participation in previous auctions because the information collected does not correlate to a bidding credit based on businesses size (as is the case in auctions of licenses for wireless services). However, recent estimates by the Bureaus are instructive. The Bureaus recently estimated that 97 percent of radio broadcasters met the SBA's prior definition of small business concern, based on annual revenues of $7 million. Moreover, the SBA has since increased that revenue threshold to $38.5 million. Based on this assessment, the Bureaus conclude that nearly all of Auction 98 applicants will likely meet the SBA's definition of a small business concern.

150. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Bureaus do not propose to implement any new reporting requirements, recordkeeping requirements or any other compliance requirements in this proceeding. Any individual or entity seeking to participate in an auction must submit electronically a short-form application (FCC Form 175). Additionally, if an applicant applies for a New Entrant Bidding Credit, the Commission uses information collected on its FCC Form 175 to determine whether the applicant is eligible for the Bidding Credit. If an applicant is a winning bidder, it is required to submit a more detailed long-form application (such as an FCC Form 301 for an FM station), including any additional information to demonstrate its eligibility for any bidding credit it may have claimed.

151. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an

agency to describe any significant alternatives beneficial to small entities considered in reaching a proposed approach, which may include the following four alternatives (among others): (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification for small entities of compliance and reporting requirements; (3) use of performance, rather than design, standards; and (4) an exemption for small entities.

152. In the *Auction 98 Procedures Announcement,* the Bureaus describe the procedures, terms, and conditions governing Auction 98 and the post-auction process, which are summarized above in this supplemental analysis. Throughout the auction process the Bureaus remain mindful of the Commission's statutory obligations to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services. The statute also directs the Commission to promote economic opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses.

153. Since the inception of the auction program in 1994, the Bureaus have taken steps to minimize the administrative burdens for applicants throughout the auction process while providing small businesses with the opportunity to participate in the provisioning of spectrum-based services. In Auction 98, these steps include, but are not limited to: (1) Administration of a two-phase application process to minimize reporting and compliance requirements as well as to expedite the auction process, which in turn minimizes administrative costs for all applicants, including small businesses; (2) establishment of an Auctions Web site, CDBS, and other online resources containing guidance for prospective applicants available at no charge for auction applicants to conduct research concerning construction permits, auction mechanics, and Commission decisions and regulations; (3) operation of a Web-based, interactive online tutorial and a mock auction online at no charge to facilitate applicant familiarization of the auction software and procedures; (4) conduct of bidding for Auction 98 electronically over the Internet, including online availability of round results and auction announcements; (5) availability of Commission staff to answer technical, legal, and other auction-related questions; and (6) a procedure for expedited return of an applicant's upfront payment by providing an online capability to request a refund before the close of the auction.

154. The Bureaus also notes that most of the Auction 98 rules would apply to all entities that choose to participate in FM broadcast auctions. However, based on the Bureaus' experience, applying the same rules equally in this context provides consistency and predictability to the auction process, and minimizes administrative burdens for all auction participants, including small businesses. For instance, the Bureaus will issue several further public notices prior to and after Auction 98 that seek to, among other things, clarify short-form application requirements and to clearly articulate the applicable procedures, Commission rules, and Federal statutes, in order to facilitate compliance by all applicants, including small businesses.

155. The Auction 98 process is designed to support the participation of small businesses. For instance, the Bureaus will publish public notices at key points of the auction process to keep applicants informed of auctions requirements and relevant deadlines. The *Auction 98 Procedures Announcement* provides detailed guidance on how a small business can participate at auction and to ensure compliance with the Commission's competitive bidding rules. After the short-form application filing deadline, the Bureaus will inform applicants as to whether their short-form applications are complete, timely, and accurate, and will provide applicants with an opportunity to correct minor application deficiencies. About two weeks prior to the beginning of bidding in Auction 98, the Bureaus will announce the identities of those applicants that are qualified to bid in Auction 98. The timeline from the announcement of Auction 98 to the execution of Auction 98, including the publication of public notices, is designed to lower costs and burdens of compliance with the Commission's competitive bidding rules for all applicants, including small businesses.

156. Auction 98 will offer a New Entrant Bidding Credit for qualified entities, many of which may be small businesses. The New Entrant Biding Credit provides a qualifying new entrant with a percentage discount on auction winning bids and is designed to promote new entrant participation in the auction and the provision of FM broadcast service. Although the New Entrant Bidding Credit does not specifically target small businesses the Bureaus estimate that the majority of Auction 98 applicants will be small businesses.

157. Once Auction 98 bidding has closed, the Bureaus will continue to provide information and services to auction applicants to facilitate compliance with their competitive bidding and media rules in the form of an additional public notice and continued support by Commission staff. At the conclusion of Auction 98, the Bureaus will release a public notice declaring the auction closed, identifying winning bidders, and establishing deadlines for submitting down payments, final payments and long-form applications, as well as posting on the Auction Web site the auction results which will include the auction's winning bidders and winning bid amounts. In summary, a number of procedures which will be implemented in Auction 98 facilitate auction participation by all interested prospective FM applicants, including small entities.

158. *Federal Rules that May Duplicate, Overlap, or Conflict with the Procedures for which Comment was Solicited in the Auction 98 Request for Comment.* None. These procedures for the conduct of Auction 98 constitute more specific implementation of the competitive bidding rules contemplated by Parts 1 and 73 of the Commission's rules and the foregoing orders, including the *Broadcast First Report and Order* and associated orders, and are fully consistent therewith.

159. *Notice to Small Business Administration.* The Bureaus will send a copy of the *Auction 98 Procedures Announcement,* including this supplemental analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A summary of the *Auction 98 Procedures Announcement,* including this supplemental analysis, will also be published in the **Federal Register**.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2015–11653 Filed 5–13–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 141219999–5432–02]

RIN 0648–BE74

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures for the 2015 Tribal and Non-Tribal Fisheries for Pacific Whiting

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule for the 2015 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006. This final rule announces the 2015 U.S. Total Allowable Catch (TAC) of 325,072 metric tons, establishes the tribal allocation of 56,888 metric tons of Pacific whiting for 2015, authorizes NMFS to reapportion unused tribal allocation to the non-tribal sectors earlier in the fishing season, establishes a set-aside for research and bycatch of 1,500 metric tons, and announces the allocations of Pacific whiting to the non-tribal fishery for 2015. This rule will ensure that the 2015 Pacific whiting fishery is managed in accordance with the goals and objectives of the Magnuson-Stevens Act, the FMP, the Pacific Whiting Act of 2006, and other applicable laws.

DATES: Effective May 14, 2015.

FOR FURTHER INFORMATION CONTACT: Miako Ushio (West Coast Region, NMFS), phone: 206–526–4644, and email: *Miako.Ushio@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html* and at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

The final environmental impact statement (FEIS) regarding Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter is available on the NOAA Fisheries West Coast Region Web site at: *www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_nepa_documents.html* and copies are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Background

This final rule announces the TAC for Pacific whiting, expressed in metric tons (mt). This is the fourth year that the TAC for Pacific whiting has been determined under the terms of the Agreement with Canada on Pacific Hake/Whiting (the Agreement) and the Pacific Whiting Act of 2006 (the Whiting Act), 16 U.S.C. 7001–7010. The Agreement and the Whiting Act establish bilateral bodies to implement the terms of the Agreement, each with various responsibilities, including: The Joint Management Committee (JMC), which is the decision-making body; the Joint Technical Committee (JTC), which conducts the stock assessment; the Scientific Review Group (SRG), which reviews the stock assessment; and the Advisory Panel (AP), which provides stakeholder input to the JMC (The Agreement, Art. II–IV; 16 U.S.C. 7001–7005). The Agreement establishes a default harvest policy (F–40 percent with a 40/10 adjustment) and allocates 73.88 percent of the TAC to the United States and 26.12 percent of the TAC to Canada. The JMC is primarily responsible for developing a TAC recommendation to the Parties (United States and Canada). The Secretary of Commerce, in consultation with the Secretary of State, has the authority to accept or reject this recommendation.

2015 Pacific Whiting Stock Assessment

The JTC prepared the stock assessment document ''Status of Pacific hake (whiting) stock in U.S. and Canadian waters in 2015,'' which was completed on March 4, 2015. The assessment presents a model that depends primarily upon 10 years of an acoustic survey biomass index and catches for information on the scale of the current Pacific whiting stock. No survey was conducted in 2014. Therefore the most recent survey information remains the survey conducted in 2013, which resulted in a survey biomass estimate of approximately 2.4 million tons. The stock is estimated to be near its highest biomass level since the early 1990s as a result of an above average 2008 cohort and a very large 2010 cohort. Recruitment in 2011 is estimated to have been below average. Cohorts from the years 2012–2014 have not been observed long enough to estimate their size or even if they are likely to be above or below average. The spawning biomass in 2015 is estimated to have declined from 2014 due to fishing and natural mortality of the 2008 and 2010 cohorts which are now fully mature and no longer growing as rapidly as in previous years. The median of the estimated 2015 spawning biomass is over 70 percent of unfished equilibrium biomass, but is highly uncertain (with 95 percent confidence intervals from 34 percent to 150 percent).

As with past estimates, there is a high level of uncertainty. However, both age-composition data from the aggregated fisheries (1975–2014) and the acoustic survey indicate a strong 2008 cohort (age-6 whiting), and an exceptionally strong 2010 cohort (age-4 whiting) contributing to recent increases in the survey index. Coast-wide catches in recent years have depended on the 2008 and 2010 year-classes, with the 2008 cohort being 70 percent of the 2011 catch and 33 percent of the 2012 catch, while the 2010 cohort accounted for 40 percent of the 2012 catch, 70 percent of the 2013 catch, and 64 percent of the 2014 catch. This is despite the fact that catches in Canada have had relatively small proportions of these two cohorts.

The JTC provided tables showing catch alternatives for 2015. Using the default F–40 percent harvest rate identified in the Agreement (Paragraph 1 of Article III), the coastwide TAC for 2015 would be 804,576 mt. The stock assessment model predicts that the probability of the spawning stock biomass dropping below 40 percent under the default harvest rate catch scenario, is 21 percent, and the probability of dropping below 10 percent of unfished biomass in 2015 is less than 1 percent. Spawning biomass in 2016 is likely to be less than in 2015 under any catch level. This is because the dominant 2010 cohort is projected to lose biomass due to natural mortality occurring at a faster rate than biomass will increase due to growth. Until cohorts are five or six years old, the model's ability to resolve cohort strength is poor. For many of the recent above average cohorts (2005, 2006, and 2008), the size of the year class was overestimated when it was age two, compared to updated estimates as the

cohort aged and more observations have been made in the fishery and survey. Given this trend and an uncertain 2010 year class, additional forecast decision tables were presented last year and a conservative estimate of the 2010 year class (the lowest 10 percent of the model-estimated recruitment) was used to set the 2014 coastwide TAC. Survey and fishery dependent data from 2013 indicate a strong likelihood that the 2010 year class is of above average size, but there is still some uncertainty about how much above average.

The SRG met in Vancouver, B.C., on February 24–27, 2015, to review the draft stock assessment document prepared by the JTC. The SRG noted that there was no acoustic survey in 2014 and that the 2015 assessment base model has the same structure as the 2014 model, with the addition of new catch and age composition data for 2014 and minor refinements to catch estimates for earlier years in the time series. They also noted that uncertainty in current stock status and projections is likely underestimated.

The SRG noted that the 2013 survey biomass estimate (age 2+) in the base assessment model included biomass extrapolated outside the surveyed area as approximately 32 percent of its total, much greater than the 12 percent in the 2012 survey estimate. Sensitivity analyses conducted by the survey team showed that the 2013 survey biomass estimate was highly sensitive to changes in the area of extrapolation. Therefore, the SRG requested the inclusion of additional analysis results in which the extrapolated biomass in the 2012 and 2013 surveys was removed. The SRG believed that the two analyses (the base model and the alternative analysis with 2012 and 2013 extrapolated biomass removed) likely bracketed the range of uncertainty due to extrapolation. Applying the default harvest rate to the sensitivity analysis with zero extrapolated biomass would bring the coastwide catch down from 804,576 mt to 628,361 mt.

The base assessment model forecasts that catches of 730,000 mt in 2015 and 650,000 mt in 2016 could be achievable when fishing at the F–40 target fishing intensity, with an equal probability of being above or below the target fishing intensity. In contrast, the sensitivity analysis recommended by the SRG using un-extrapolated 2012 and 2013 survey index values forecasts that slightly lower catches of 580,000 mt in 2015 and 520,000 mt in 2016 may be achievable when fishing at the same $F_{40\%}$ target. The 2015 median stock biomass estimate is well above the $B_{40\%}$ (target) biomass threshold, and fishing intensity is well below the $F_{40\%}$ target, in both the base and alternative models. The SRG concluded that the coastal Pacific whiting stock is not overfished and that overfishing is not occurring in either scenario.

The AP met on March 17, 2015, and recommended a 2015 TAC to the JMC on March 18, 2015. At its March 18–19, 2015, meeting, the JMC reviewed the advice of the JTC, the SRG, and the AP, and agreed on a TAC recommendation for transmittal to the Parties. Paragraph 1 of Article III of the Agreement directs the default harvest rate to be used unless scientific evidence demonstrates that a different rate is necessary to sustain the offshore whiting resource. The JMC noted that there is still some uncertainty about the strength of the 2010 year class, acknowledged the overall stock is dominated by the 2010 year class, and that there is currently no evidence of large recruitments in more recent year classes. Because of these factors, the JMC did not apply the default harvest rate under the Agreement to determine a TAC for 2015. Instead, the JMC recommended an unadjusted TAC of 383,365 mt for 2015, which is less than half of what the TAC would be by using the default harvest rate. This conservative approach that focused on uncertainty of the 2010 year class strength, coupled with no evidence of large recruitments in more recent year classes, was endorsed by the AP. Both the United States and Canada caught less than their individual TAC in 2014. Therefore, the equivalent of 15 percent of the 2014 TAC is added to each Party's TAC in accordance with Article II of the Agreement, resulting in a 2015 adjusted coastwide TAC of 440,000 mt.

The recommendation for an unadjusted 2015 United States TAC of 283,230 mt, plus 41,842 mt carryover of uncaught quota from 2014 (equivalent to 15 percent of the 2014 TAC) results in an adjusted United States TAC of 325,072 mt for 2015 (73.88 percent of the coastwide TAC). This recommendation is consistent with the best available science, provisions of the Agreement, and the Whiting Act. The recommendation was transmitted via letter to the Parties on March 19, 2015. NMFS, under delegation of authority from the Secretary of Commerce, approved the adjusted TAC recommendation of 325,072 mt for U.S. fisheries on April 2, 2015.

Tribal Fishery Allocation and Reapportionment

This final rule establishes the tribal allocation of Pacific whiting for 2015 and modifies the timing of potential reapportionment from the tribal to the non-tribal sectors. NMFS issued a proposed rule regarding this allocation and change to management of the 2015 tribal Pacific whiting fishery on March 10, 2015 (80 FR 12611). This action finalizes the tribal allocation and reapportionment management measures.

Since 1996, NMFS has been allocating a portion of the U.S. TAC of Pacific whiting to the tribal fishery using the process described in § 660.50(d)(1). According to § 660.55(b), the tribal allocation is subtracted from the total U.S. Pacific whiting TAC. The tribal Pacific whiting fishery is managed separately from the non-tribal Pacific whiting fishery, and is not governed by limited entry or open access regulations or allocations.

The proposed rule described the tribal allocation as 17.5 percent of the U.S. TAC, and projected a range of potential tribal allocations for 2015 based on a range of U.S. TACs over the last 10 years, 2005 through 2014 (plus or minus 25 percent to capture variability in stock abundance). As described in the proposed rule, the resulting range of potential tribal allocations was 17,842 mt to 63,635 mt.

As described earlier in this preamble, the U.S. TAC for 2015 is 325,072 mt. Applying the approach described in the proposed rule, NMFS is establishing the 2015 tribal allocation of 56,888 mt (17.5 percent of the U.S. TAC) at § 660.50(f)(4) by this final rule. While the total amount of Pacific whiting to which the Tribes are entitled under their treaty right has not yet been determined, and new scientific information or discussions with the relevant parties may impact that decision, the best available scientific information to date suggests that 56,888 mt is within the likely range of potential treaty right amounts.

As with prior tribal Pacific whiting allocations, this final rule is not intended to establish precedent for future Pacific whiting seasons, or for the determination of the total amount of whiting to which the Tribes are entitled under their treaty right. Rather, this rule adopts an interim allocation, pending the determination of the total treaty amount. That amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and States of Washington and Oregon.

This final rule would also revise the regulation authorizing NMFS to reapportion unused allocation from the tribal sector to the non-tribal sectors. The change would allow NMFS to take reapportionment action earlier in the

fishing season than was previously allowed. As described in the proposed rule (March 10, 2015, 80 FR 12611), NMFS is revising regulations at § 660.131(h) to allow, in specific circumstances, reapportionment of Pacific whiting from the tribal fishery to the non-tribal Pacific whiting fisheries prior to September 15. In some years, the participating tribes may determine, prior to September 15, that they will not use a portion of the tribal allocation. Regulations at § 660.131(h) are revised by this final rule to allow NMFS to reapportion whiting earlier under these circumstances.

Harvest Guidelines and Allocations

This final rule establishes the fishery harvest guideline (HG) and allocates it between the three sectors of the Pacific whiting fishery. The fishery harvest guideline, sometimes called the non-tribal allocation, was not included in the tribal whiting proposed rule published on March 10, 2015 (80 FR 12611), for two reasons related to timing and process. First, a recommendation on the coastwide TAC for Pacific whiting for 2015, under the terms of the Agreement with Canada, was not available until March 29, 2015. This recommendation for a U.S. TAC was approved by NMFS, under delegation of authority from the Secretary of Commerce, on April 2, 2015. Second, the fishery harvest guideline is established following deductions from the U.S. TAC for the tribal allocation (56,888 mt), mortality in scientific research activities, and fishing mortality in non-groundfish fisheries (1,500 mt). The Council establishes the amounts deducted from the U.S. TAC for scientific research and non-groundfish fisheries on an annual basis at its April meeting, based on estimates of scientific research catch and estimated bycatch mortality in non-groundfish fisheries. For 2015, the Council recommended and the West Coast Region approves a research and bycatch set-aside of 1,500 mt. These amounts are not set until the TAC is available. The fishery HG is therefore being finalized with this rule.

The 2015 fishery harvest guideline (HG), sometimes referred to as the non-tribal allocation, for Pacific whiting is 266,684 mt. This amount was determined by deducting from the total U.S. TAC of 325,072 mt, the 56,888 mt tribal allocation, along with 1,500 mt for scientific research catch and fishing mortality in non-groundfish fisheries. Regulations at § 660.55(i)(2) allocate the fishery HG among the non-tribal catcher/processor, mothership, and shorebased sectors of the Pacific whiting fishery. The Catcher/Processor Coop Program is allocated 34 percent (90,673 mt for 2015), the Mothership Coop Program is allocated 24 percent (64,004 mt for 2015), and the Shorebased IFQ Program is allocated 42 percent (112,007 mt for 2015). The fishery south of 42° N. lat. may not take more than 5,600 mt (5 percent of the Shorebased IFQ Program allocation) prior to the start of the primary Pacific whiting season north of 42° N. lat.

The 2015 allocations of canary rockfish, darkblotched rockfish, Pacific ocean perch and widow rockfish to the Pacific whiting fishery were published in a final rule on March 10, 2015 (80 FR 12567). The allocations to the Pacific whiting fishery for these species are described in the footnotes to Table 1.b to Part 660, Subpart C and are not changed via this rulemaking.

Comments and Responses

On March 10, 2015, NMFS issued a proposed rule for the allocation and management of the 2015 tribal Pacific whiting fishery. The comment period on the proposed rule closed on April 9, 2015. Two comment letters were received: Department of the Interior submitted a letter of ''no comments'' and a member of the public submitted a comment letter supporting the proposed action. Specifically, they spoke in favor of the proposed tribal allocation and suggested that the proposed action mitigates potential negative effects to non-tribal industry from that tribal allocation.

Classification

The Annual Specifications and Management Measures for the 2015 Tribal and non-Tribal Fisheries for Pacific Whiting are issued under the authority of the Magnuson-Stevens Act, and the Pacific Whiting Act of 2006, and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the FMP. NMFS has determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, took into account the data, views, and comments received during the comment period.

NMFS has determined that the tribal Pacific whiting fishery conducted off the coast of the State of Washington is consistent, to the maximum extent practicable, with the approved coastal zone management program of the States of Washington and Oregon. NMFS has also determined that the Pacific whiting fishery, both tribal and non-tribal, is consistent, to the maximum extent practicable, with approved coastal zone management programs for the States of Washington and Oregon. NMFS sent letters to the State of Washington and the State of Oregon describing its determination of consistency dated February 3, 2015. The State of Washington responded indicating agreement with the determination, and Oregon did not respond to the letters; therefore, consistency is inferred.

Pursuant to 5 U.S.C. 553(b)(B), the NMFS Assistant Administrator finds good cause to waive prior public notice and comment and delay in effectiveness those provisions of this final rule that were not included in 80 FR 12611, *e.g.,* the U.S. TAC, as delaying this rule would be contrary to the public interest. The annual harvest specifications for Pacific whiting must be implemented by the start of the primary Pacific whiting season, which begins on May 15, 2015, or the primary Pacific whiting season will effectively remain closed.

Every year, NMFS conducts a Pacific whiting stock assessment in which U.S. and Canadian scientists cooperate. The 2015 stock assessment for Pacific whiting was prepared in early 2015, and included updated total catch, length and age data from the U.S. and Canadian fisheries from 2014, and biomass indices from the 2013 Joint U.S.-Canadian acoustic/midwater trawl surveys. Because of this late availability of the most recent data for the assessment, and the need for time to conduct the treaty process for determining the TAC using the most recent assessment, it would not be possible to allow for notice and comment before the start of the primary Pacific whiting season on May 15.

A delay in implementing the Pacific whiting harvest specifications to allow for notice and comment would be contrary to the public interest because it would require either a shorter primary whiting season or development of a TAC without the most recent data. A shorter season could prevent the tribal and non-tribal fisheries from attaining their 2015 allocations, which would result in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities. A TAC determined without the most recent data could fail to account for significant fluctuations in the biomass of this relatively short-lived species. To prevent these adverse effects and to allow the Pacific whiting season to commence, it is in the public interest to waive prior notice and comment.

In addition, pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator finds good cause to waive the 30-day delay in effectiveness. Waiving the 30-day delay in

effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Failure to make this final rule effective at the start of the fishing year will undermine the intent of the rule, which is to promote the optimal utilization and conservation of Pacific whiting. Making this rule effective immediately would also serve the best interests of the public because it will allow for the longest possible Pacific whiting fishing season and therefore the best possible economic outcome for those whose livelihoods depend on this fishery. Because the 30-day delay in effectiveness would potentially cause significant financial harm without providing any corresponding benefits, this final rule is effective upon publication in the **Federal Register**.

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html*

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

When an agency proposes regulations, the Regulatory Flexibility Act (RFA) requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA) document that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. After the public comment period, the agency prepares a Final Regulatory Flexibility Analysis (FRFA) that takes into consideration any new information and public comments. This FRFA incorporates the IRFA and a summary of the analyses completed to support the action. NMFS published a proposed rule on March 10, 2015 (80 FR 12611) for the allocation and management of the 2015 tribal Pacific whiting fishery. The comment period on the proposed rule closed on April 9, 2015, and neither for the two comments received by NMFS related to the IRFA.

An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in Regulatory Flexibility Act, section 604(a)(1) through (5), and summarized below. The FRFA must contain: (1) A succinct statement of the need for, and objectives of, the rule; (2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available; (4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This final rule establishes the initial 2015 Pacific whiting allocations for the tribal fishery, the fishery HG, the allocations for the non-tribal sectors (catcher/processor, mothership, and shoreside), and the amount of Pacific whiting deducted from the TAC for scientific research and fishing mortality in non-groundfish fisheries. The amount of Pacific whiting allocated to these sectors is based on the U.S. TAC. From the U.S. TAC, the tribal allocation and small amounts of whiting that account for scientific research catch and for fishing mortality in non-groundfish fisheries are deducted. The remainder is the fishery HG. This fishery HG is then allocated among the other three sectors as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program.

There are four tribes that can participate in the tribal whiting fishery: The Hoh, Makah, Quileute, and Quinault. The current tribal fleet is composed of 5 trawlers but in recent years, there have been fewer vessels actually fishing. Based on groundfish ex-vessel revenues and on tribal enrollments (the population size of each tribe), the four tribes and their fleets are considered ''small'' entities. This rule would impact vessels in the non-tribal fishery that fish for Pacific whiting. Currently, there are three non-tribal sectors in the Pacific whiting fishery: Shorebased Individual Fishing Quota (IFQ) Program—Trawl Fishery; Mothership Coop (MS) Program—Whiting At-sea Trawl Fishery; and C/P Coop Program—Whiting At-sea Trawl Fishery.

Currently, the Shorebased IFQ Program is composed of 149 quota share (QS) permits/accounts, 152 vessel accounts, and 43 first receivers. The MS Program is currently composed of a single coop, with six mothership processor permits, and 34 Mothership/Catcher-Vessel (MS/CV) endorsed permits, with three permits each having two catch history assignments. The C/P Program is composed of 10 C/P permits owned by three companies that have formed a single coop.

Many companies participate in two sectors and some participate in all three sectors. After accounting for cross participation, multiple QS account holders, and for affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these proposed regulations, 89 of which are considered to be ''small'' businesses. These numbers do not include affiliation via the two coops. All of the 34 mothership catch history assignments are associated with a single Mothership Coop and all ten of the C/P permits, these coops are considered large entities. These coops are considered large entities from several perspectives. They have participants that are large entities, whiting coop revenues exceed or have exceeded the $20.5 million, or coop members are connected to American Fishing Act permits or coops where the NMFS Alaska Region has determined they are all large entities (79 FR 54597 (September 12, 2014)). Therefore, there are 17 large entities and 89 small entities affected by this rule.

There are no significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any of the significant economic impact of the proposed rule

on small entities. NMFS believes this rule will not adversely affect small entities. There are no significant alternatives to the rule that accomplish the stated objectives of applicable statutes and the treaties with the affected tribes that minimize any of the significant economic impact of the proposed rule on small entities.

For the years 2010 to 2014, the total Pacific whiting fishery (tribal and non-tribal) averaged harvests of approximately 183,000 mt annually, worth over $43 million in ex-vessel revenues. As the U.S. Pacific whiting TAC has been highly variable during this time, so have harvests. In the past five years, harvests have ranged from 160,000 mt (2012) to 264,000 mt (2014). Ex-vessel revenues have also varied. Annual ex-vessel revenues have ranged from $30 million (2010) to $65 million (2013). Total Pacific whiting harvest in 2013 was approximately 233,000 mt worth $65 million, at an ex-vessel price of $280 per mt. Ex-vessel revenues in 2014 were over $64 million with a harvest of approximately 264,000 tons and ex-vessel price of $240 per mt. The prices for Pacific whiting are largely determined by the world market for groundfish, because most of the Pacific whiting harvested is exported. Note that the use of ex-vessel values does not take into account the wholesale or export value of the fishery or the costs of harvesting and processing Pacific whiting into a finished product. NMFS does not have sufficient information to make a complete assessment of these values. In 2014, the total estimated catch of Pacific whiting by tribal and non-tribal fishermen was 264,000 mt, or 84 percent of the U.S. TAC (316,206 mt). There were two fall reapportionments totaling 45,000 mt of Pacific whiting from the tribal to non-tribal sectors (September 12 and October 23, 2014). Using the average 2014 ex-vessel price of $240, these reapportionments were valued at approximately $10.8 million. The 2014 tribal harvest was less than 1,000 mt, of the final tribal allocation of 10,336 mt. In total, non-tribal sectors harvested 98 percent of the final non-tribal allocation of 234,040 mt. The revised Pacific whiting allocations for 2014 were: Tribal 10,336 mt, C/P Coop 103,486 mt; MS Coop 73,049 mt; and Shorebased IFQ Program 127,835 mt. This rule increases the U.S. adjusted TAC for 2015 to 325,072 mt, and the tribal allocation of 17.5 percent of the U.S. TAC is 56,888 mt. After setting aside 1,500 mt for scientific research catch and fishing mortality in non-groundfish fisheries, the U.S. fishery HG for 2015 is 266,684 mt. Sector allocations are higher than sector catches in 2014, so this rule will be beneficial to both large and small entities. The initial 2015 allocations to these non-tribal sectors are 3% higher than their 2014 initial allocations. This rule will be beneficial to both large and small entities.

The RFA can be found at *http://www.archives.gov/federal-register/laws/regulatory-flexibility/.* The NMFS Economic Guidelines that describe the RFA and EO 12866 can be found at *http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf.*

There are no recordkeeping requirements associated with this final rule. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the FMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

NMFS has reinitiated section 7 consultation on the Pacific Coast Groundfish FMP with respect to its effects on listed salmonids. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS would coordinate with the Council to put additional alternatives or measures into place, as required. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species, including listed eulachon, the southern distinct population segment (DPS) of green sturgeon, humpback whales, the eastern DPS of Steller sea lions, and leatherback sea turtles. The opinion also concluded that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions. Since that biological opinion, the eastern DPS of Steller sea lions was delisted on November 4, 2013 (78 FR 66140); however, this delisting did not change the designation of the codified critical habitat for the eastern DPS of Steller sea lions. On January 21, 2013, NMFS informally consulted on the fishery's effects on eulachon to consider whether the 2012 opinion should be reconsidered for eulachon in light of new information from the 2011 fishery and the proposed chafing gear modifications. NMFS determined that information about bycatch of eulachon in 2011 and chafing gear regulations did not change the effects that were

analyzed in the December 7, 2012, biological opinion, or provide any other basis to reinitiate consultation.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

West Coast pot fisheries for sablefish are considered Category II fisheries under the Marine Mammal Protection Act (MMPA), indicating occasional interactions. All other West Coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. MMPA section 101(a)(5)(E) requires that NMFS authorize the taking of ESA-listed marine mammals incidental to U.S. commercial fisheries if it makes the requisite findings, including a finding that the incidental mortality and serious injury from commercial fisheries will have a negligible impact on the affected species or stock. As noted above, NMFS concluded in its biological opinion for the 2012 groundfish fisheries that these fisheries were not likely to jeopardize Steller sea lions or humpback whales. The eastern distinct population segment of Steller sea lions was delisted under the ESA on November 4, 2013 (78 FR 66140). On September 4, 2013, based on its negligible impact determination dated August 28, 2013, NMFS issued a permit for a period of 3 years to authorize the incidental taking of humpback whales by the sablefish pot fishery (78 FR 54553).

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, NMFS has coordinated specifically with the tribes interested in the whiting fishery regarding the issues addressed by this final rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: May 8, 2015.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.50, revise paragraph (f)(4) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2015 is 56,888 mt.

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■ 3. Tables 1a and 1b to part 660, subpart C, are revised to read as follows:

Table 1a to Part 660, Subpart C – 2015, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest Guidelines (Weights in Metric Tons)

	OFL	ABC	ACL a/	Fishery HG b/
BOCACCIO S. of 40°10' N. lat. c/	1,444	1,380	349	341
CANARY ROCKFISH d/	733	701	122	107
COWCOD S. of 40°10' N. lat. e/	67	60	10	8
DARKBLOTCHED ROCKFISH f/	574	549	338	317
PACIFIC OCEAN PERCH g/	842	805	158	143
PETRALE SOLE h/	2,946	2,816	2,816	2,579
YELLOWEYE ROCKFISH i/	52	43	18	12
Arrowtooth flounder j/	6,599	5,497	5,497	3,410
Black rockfish (OR-CA) k/	1,176	1,124	1,000	999
Black rockfish (WA) l/	421	402	402	388
Cabezon (CA) m/	161	154	154	154
Cabezon (OR) n/	49	47	47	47
California scorpionfish o/	119	114	114	112
Chilipepper S. of 40°10' N. lat. p/	1,703	1,628	1,628	1,604
Dover sole q/	66,871	63,929	50,000	48,406
English sole r/	10,792	9,853	9,853	9,640
Lingcod N. of 40°10' N. lat. s/	3,010	2,830	2,830	2,552
Lingcod S. of 40°10' N. lat. t/	1,205	1,004	1,004	995
Longnose skate u/	2,449	2,341	2,000	1,927
Longspine thornyhead (coastwide) v/	5,007	4,171	NA	NA
Longspine thornyhead N. of 34°27' N. lat.	NA	NA	3,170	3,124
Longspine thornyhead S. of 34°27' N. lat.	NA	NA	1,001	998
Pacific Cod w/	3,200	2,221	1,600	1,091
Pacific whiting x/	804,576	x/	x/	266,684
Sablefish (coastwide)	7,857	7,173	NA	NA
Sablefish N. of 36° N. lat. y/	NA	NA	4,793	See Table 1c
Sablefish S. of 36° N. lat. z/	NA	NA	1,719	1,714
Shortbelly aa/	6,950	5,789	500	498
Shortspine thornyhead (coastwide) bb/	3,203	2,668	NA	NA
Shortspine thornyhead N. of 34°27' N. lat.	NA	NA	1,745	1,686
Shortspine thornyhead S. of 34°27' N. lat.	NA	NA	923	881
Spiny dogfish cc/	2,523	2,101	2,101	1,763
Splitnose S. of 40°10' N. lat. dd/	1,794	1,715	1,715	1,705
Starry flounder ee/	1,841	1,534	1,534	1,524
Widow rockfish ff/	4,137	3,929	2,000	1,880
Yellowtail N. of 40°10' N. lat. gg/	7,218	6,590	6,590	5,560
Minor Nearshore Rockfish N. of 40°10' N. lat. hh/	88	77	69	69
Minor Shelf Rockfish N. of 40°10' N. lat. ii/	2,209	1,944	1,944	1,872
Minor Slope Rockfish N. of 40°10' N. lat. jj/	1,831	1,693	1,693	1,629
Minor Nearshore Rockfish S. of 40°10' N. lat. kk/	1,313	1,169	1,114	1,110
Minor Shelf Rockfish S. of 40°10' N. lat. ll/	1,918	1,625	1,624	1,575
Minor Slope Rockfish S. of 40°10' N. lat. mm/	813	705	693	673
Other Flatfish nn/	11,453	8,749	8,749	8,545
Other Fish oo/	291	242	242	242

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery harvest guidelines means the harvest guideline or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-

groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Bocaccio. A bocaccio stock assessment update was conducted in 2013 for the bocaccio stock between the U.S.-Mexico border and Cape Blanco. The stock is managed with stock-specific harvest specifications south of 40°10′ N. lat. and within the Minor Shelf Rockfish complex north of 40°10 N. lat. A historical catch distribution of approximately 6 percent was used to apportion the assessed stock to the area north of 40°10′ N. lat. The bocaccio stock was estimated to be at 31.4 percent of its unfished biomass in 2013. The OFL of 1,444 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,380 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 349 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2022 and an SPR harvest rate of 77.7 percent. 8.3 mt is deducted from the ACL to accommodate the incidental open access fishery (0.7 mt), EFP catch (3.0 mt) and research catch (4.6 mt), resulting in a fishery HG of 340.7 mt. The California recreational fishery has an HG of 178.8 mt.

[d] Canary rockfish. A canary rockfish stock assessment update was conducted in 2011 and the stock was estimated to be at 23.2 percent of its unfished biomass coastwide in 2011. The coastwide OFL of 733 mt is projected in the 2011 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The ABC of 701 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 122 mt is based on the current rebuilding plan with a target year to rebuild of 2030 and an SPR harvest rate of 88.7 percent. 15.2 mt is deducted from the ACL to accommodate the Tribal fishery (7.7 mt), the incidental open access fishery (2 mt), EFP catch (1.0 mt) and research catch (4.5 mt) resulting in a fishery HG of 106.8 mt. Recreational HGs are: 3.4 mt (Washington); 11.7 mt (Oregon); and 24.3 mt (California).

[e] Cowcod. A stock assessment for the Conception Area was conducted in 2013 and the stock was estimated to be at 33.9 percent of its unfished biomass in 2013. The Conception Area OFL of 55.0 mt is projected in the 2013 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The OFL contribution of 11.6 mt for the unassessed portion of the stock in the Monterey area is based on depletion-based stock reduction analysis. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10′ N. lat. OFL of 66.6 mt. The ABC for the area south of 40°10′ N. lat. is 59.9 mt. The assessed portion of the stock in the Conception Area is considered category 2, with a Conception area contribution to the ABC of 50.2 mt, which is an 8.7 percent reduction from the Conception area OFL (σ=0.72/P*=0.45). The unassessed portion of the stock in the Monterey area is considered a category 3 stock, with a contribution to the ABC of 9.7 mt, which is a 16.6 percent reduction from the Monterey area OFL (σ=1.44/P*=0.45). A single ACL of 10.0 mt is being set for both areas combined. The ACL of 10.0 mt is based on the rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 82.7 percent, which is equivalent to an exploitation rate (catch over age 11+ biomass) of 0.007. 2.0 mt is deducted from the ACL to accommodate EFP fishing (less than 0.02 mt) and research activity (2.0 mt), resulting in a fishery HG of 8.0 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 4.0 mt is being set for both areas combined.

[f] Darkblotched rockfish. A 2013 stock assessment estimated the stock to be at 36 percent of its unfished biomass in 2013. The OFL of 574 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 549 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 338 mt is based on the current rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. 20.8 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (18.4 mt), EFP catch (0.1 mt) and research catch (2.1 mt), resulting in a fishery HG of 317.2 mt.

[g] Pacific Ocean Perch. A POP stock assessment was conducted in 2011 and the stock was estimated to be at 19.1 percent of its unfished biomass in 2011. The OFL of 842 mt for the area north of 40°10′ N. lat. is projected in the 2011 rebuilding analysis using an $F_{50\%}$ F_{MSY} proxy. The ABC of 805 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 158 mt is based on the current rebuilding plan with a target year to rebuild of 2051 and an SPR harvest rate of 86.4 percent. 15 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (0.6 mt), and research catch (5.2 mt), resulting in a fishery HG of 143.0 mt.

[h] Petrale sole. A 2013 stock assessment estimated the stock to be at 22.3 percent of its unfished biomass in 2013. The OFL of 2,946 mt is projected in the 2013 assessment using an $F_{30\%}$ F_{MSY} proxy. The ABC of 2,816 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is based on the 25–5 harvest control rule specified in the current rebuilding plan; since the stock is projected to be rebuilt at the start of 2014, the ACL is set equal to the ABC. 236.6 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), the incidental open access fishery (2.4 mt), and research catch (14.2 mt), resulting in a fishery HG of 2,579.4 mt.

[i] Yelloweye rockfish. A stock assessment update was conducted in 2011. The stock was estimated to be at 21.4 percent of its unfished biomass in 2011. The 52 mt coastwide OFL was projected in the 2011 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The ABC of 43 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The 18 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76.0 percent. 5.8 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.03 mt) and research catch (3.3 mt) resulting in a fishery HG of 12.2 mt. Recreational HGs are: 2.9 mt (Washington); 2.6 mt (Oregon); and 3.4 mt (California).

[j] Arrowtooth flounder. The arrowtooth flounder stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 6,599 mt is derived from the 2007 assessment using an $F_{30\%}$ F_{MSY} proxy. The ABC of 5,497 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 2,087 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (16.4 mt), resulting in a fishery HG of 3,410 mt.

[k] Black rockfish south (Oregon and California). A stock assessment was conducted for black rockfish south of 45°46′ N. lat. (Cape Falcon, Oregon) to Central California (*i.e.,* the southern-most extent of black rockfish, Love et al. 2002) in 2007. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is derived from the 2007 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$ plus 3 percent of the OFL from the stock assessment conducted for black rockfish north of 45°46′ N. lat., to cover the portion of the stock occurring off Oregon north of Cape Falcon (the 3% adjustment is based on historical catch distribution). The resulting OFL for the area south of 46°16′ N. lat. is 1,176 mt. The ABC of 1,124 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 2015 ACL is 1,000 mt, which maintains the constant catch strategy designed to keep the stock above its target biomass of $B_{40\%}$. 1 mt is deducted from the ACL to accommodate EFP catch, resulting in a fishery HG of 999 mt. The black rockfish ACL, in the area south of 46°16′ N. lat. (Columbia River), is subdivided with separate HGs for waters off Oregon (579 mt/58 percent) and for waters off California (420 mt/42 percent).

[l] Black rockfish north (Washington). A stock assessment was conducted for black rockfish north of 45°46′ N. lat. (Cape Falcon, Oregon) in 2007. The biomass in the north was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is derived from the 2007 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16′ N. lat. is 421 mt and is 97 percent of the OFL from the assessed area based on the area distribution of historical catch. The ABC of 402 mt for the north is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 14 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG of 388 mt.

[m] Cabezon (California). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off California was estimated to be at 48.3 percent of its unfished biomass in 2009. The OFL of 161 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 154 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. There are no

deductions from the ACL so the fishery HG is equal to the ACL of 154 mt.

[n] Cabezon (Oregon). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off Oregon was estimated to be at 52 percent of its unfished biomass in 2009. The OFL of 49 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 47 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. There are no deductions from the ACL so the fishery HG is also equal to the ACL of 47 mt.

[o] California scorpionfish was assessed in 2005 and was estimated to be at 79.8 percent of its unfished biomass in 2005. The OFL of 119 mt is projected in the 2005 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$. The ABC of 114 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 2 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 112 mt.

[p] Chilipepper. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 70 percent of its unfished biomass in 2006. Chilipepper are managed with stock-specific harvest specifications south of 40°10 N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. Projected OFLs are stratified north and south of 40°10′ N. lat. based on the average 1998–2008 assessed area catch, which is 93 percent for the area south of 40°10′ N. lat. and 7 percent for the area north of 40°10′ N. lat. The OFL of 1,703 mt for the area south of 40°10′ N. lat. is projected in the 2007 assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,628 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 24 mt is deducted from the ACL to accommodate the incidental open access fishery (5 mt), EFP fishing (10 mt), and research catch (9 mt), resulting in a fishery HG of 1,604 mt.

[q] Dover sole. A 2011 Dover sole assessment estimated the stock to be at 83.7 percent of its unfished biomass in 2011. The OFL of 66,871 mt is projected in the 2011 stock assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 63,929 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. However, the ACL of 50,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. 1,594 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt), and research catch (41.9 mt), resulting in a fishery HG of 48,406 mt.

[r] English sole. A 2013 stock assessment was conducted, which estimated the stock to be at 88 percent of its unfished biomass in 2013. The OFL of 10,792 mt is projected in the 2013 assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 9,853 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) as it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 213 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (7 mt) and research catch (5.8 mt), resulting in a fishery HG of 9,640 mt.

[s] Lingcod north. A lingcod stock assessment was conducted in 2009. The lingcod spawning biomass off Washington and Oregon was estimated to be at 62 percent of its unfished biomass in 2009. The OFL for Washington and Oregon of 1,898 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The OFL is re-apportioned by adding 48% of the OFL from California, resulting in an OFL of 3,010 mt for the area north of 40°10′ N. lat. The ABC of 2,830 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) for the area north of 42° N. lat. as it's a category 1 stock, and an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) for the area between 42° N. lat. and 40°10′ N. lat. as it's a category 2 stock. The ACL is set equal to the ABC. 278 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (16 mt), EFP catch (0.5 mt) and research catch (11.7 mt), resulting in a fishery HG of 2,552 mt.

[t] Lingcod south. A lingcod stock assessment was conducted in 2009. The lingcod spawning biomass off California was estimated to be at 74 percent of its unfished biomass in 2009. The OFL for California of 2,317 mt is projected in the assessment using an F_{MSY} proxy of F45%. The OFL is re-apportioned by subtracting 48% of the OFL, resulting in an OFL of 1,205 mt for the area south of 40°10′ N. lat. The ABC of 1,004 mt is based on a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 9 mt is deducted from the ACL to accommodate the incidental open access fishery (7 mt), EFP fishing (1 mt), and research catch (1.1 mt), resulting in a fishery HG of 995 mt.

[u] Longnose skate. A stock assessment was conducted in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 2,449 mt is derived from the 2007 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 2,341 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 2,000 mt is a fixed harvest level that provides greater access to the stock and is less than the ABC. 73 mt is deducted from the ACL to accommodate the Tribal fishery (56 mt), incidental open access fishery (3.8 mt), and research catch (13.2 mt), resulting in a fishery HG of 1,927 mt.

[v] Longspine thornyhead. A 2013 longspine thornyhead coastwide stock assessment estimated the stock to be at 75 percent of its unfished biomass in 2013. A coastwide OFL of 5,007 mt is projected in the 2013 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,171 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 3,170 mt, and is 76 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 47 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (3 mt), and research catch (13.5 mt) resulting in a fishery HG of 3,124 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 1,001 mt and is 24 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 3 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt), and research catch (1 mt) resulting in a fishery HG of 998 mt.

[w] Pacific cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,221 mt is a 30.6 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 stock. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. 509 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (7 mt), and the incidental open access fishery (2.0 mt), resulting in a fishery HG of 1,091 mt.

[x] Pacific whiting. The coastwide stock assessment was conducted in 2015 and estimated the stock to be at 74 percent of its unfished biomass. The 2015 OFL of 804,576 mt is based on the 2015 assessment with an $F_{40\%}$ F_{MSY} proxy. The 2015 coastwide, unadjusted Total Allowable Catch (TAC) of 383,365 mt is based on the 2015 stock assessment. Consistent with the provisions of the Pacific Hake/Whiting Agreement, up to 15 percent of each party's unadjusted 2014 TAC (41,842 mt for the U.S. and 14,793 mt for Canada) is added to the 2015 unadjusted TAC, resulting in an adjusted coastwide 2015 TAC of 440,000 mt. The U.S. TAC is 73.88 percent of the coastwide TAC. The U.S. adjusted 2015 TAC is 325,072 mt. From the adjusted U.S. TAC, 56,888 mt is deducted to accommodate the Tribal fishery, and 1,500 mt is deducted to accommodate research and bycatch in other fisheries, resulting in a fishery HG of 266,684 mt. The TAC for Pacific whiting is established under the provisions of the Pacific Hake/Whiting Agreement with Canada and the Pacific Whiting Act of 2006, 16 U.S.C. 7001–2010, and the international exception applies. Therefore, no ABC or ACL values are provided for Pacific whiting.

[y] Sablefish north. A coastwide sablefish stock assessment was conducted in 2011. The coastwide sablefish biomass was estimated to be at 33 percent of its unfished biomass in 2011. The coastwide OFL of 7,857 mt is projected in the 2011 stock assessment using an F_{MSY} proxy of $F_{45\%}$. The ABC of 7,173 mt is an 8.7 percent reduction from the OFL (σ=0.36/P*=0.40). The 40–10 adjustment is applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N. lat., using the 2003–2010 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.6 percent apportioned north of 36° N. lat. and 26.4 percent apportioned south of 36° N. lat. The northern ACL is 4,793 mt and is reduced by 479 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.). The 479 mt

Tribal allocation is reduced by 1.6 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[z] Sablefish south. The ACL for the area south of 36° N. lat. is 1,719 mt (26.4 percent of the calculated coastwide ACL value). 5 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt) and research catch (3 mt), resulting in a fishery HG of 1,714 mt.

[aa] Shortbelly rockfish. A non-quantitative shortbelly rockfish assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated to be 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt is based on the estimated MSY in the 2007 stock assessment. The ABC of 5,789 mt is a 16.7 percent reduction of the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The 500 mt ACL is set to accommodate incidental catch when fishing for co-occurring healthy stocks and in recognition of the stock's importance as a forage species in the California Current ecosystem. 2 mt is deducted from the ACL to accommodate research catch, resulting in a fishery HG of 498 mt.

[bb] Shortspine thornyhead. A 2013 coastwide shortspine thornyhead stock assessment estimated the stock to be at 74.2 percent of its unfished biomass in 2013. A coastwide OFL of 3,203 mt is projected in the 2013 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,668 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,745 mt. The northern ACL is 65.4 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 59 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (2 mt), and research catch (7 mt) resulting in a fishery HG of 1,686 mt for the area north of 34°27′ N. lat. For that portion of the stock south of 34°27′ N. lat. the ACL is 923 mt. The southern ACL is 35.6 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 42 mt is deducted from the ACL to accommodate the incidental open access fishery (41 mt) and research catch (1 mt), resulting in a fishery HG of 881 mt for the area south of 34°27′ N. lat.

[cc] Spiny dogfish. A coastwide spiny dogfish stock assessment was conducted in 2011. The coastwide spiny dogfish biomass was estimated to be at 63 percent of its unfished biomass in 2011. The coastwide OFL of 2,523 mt is derived from the 2011 assessment using an F_{MSY} proxy of $F_{50\%}$. The coastwide ABC of 2,101 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 338 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (49.5 mt), EFP catch (1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,763 mt.

[dd] Splitnose rockfish. A splitnose rockfish coastwide assessment was conducted in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose rockfish in the north is managed in the Minor Slope Rockfish complex and with species-specific harvest specifications south of 40°10′ N. lat. The coastwide OFL is projected in the 2009 assessment using an F_{MSY} proxy of $F_{50\%}$. The coastwide OFL is apportioned north and south of 40°10′ N. lat. based on the average 1916–2008 assessed area catch resulting in 64.2 percent of the coastwide OFL apportioned south of 40°10′ N. lat., and 35.8 percent apportioned for the contribution of splitnose rockfish to the northern Minor Slope Rockfish complex. The southern OFL of 1,794 mt results from the apportionment described above. The southern ABC of 1,715 mt is a 4.4 percent reduction from the southern OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is estimated to be above its target biomass of $B_{40\%}$. 10.5 mt is deducted from the ACL to accommodate research catch (9 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,705 mt.

[ee] Starry Flounder. The stock was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent in Washington and Oregon, and 62 percent in California). The coastwide OFL of 1,841 mt is derived from the 2005 assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 1,534 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is estimated to be above its target biomass of $B_{25\%}$. 10.3 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), and the incidental open access fishery (8.3 mt), resulting in a fishery HG of 1,524 mt.

[ff] Widow rockfish. The widow rockfish stock was assessed in 2011 and was estimated to be at 51.1 percent of its unfished biomass in 2011. The OFL of 4,137 mt is projected in the 2011 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The ABC of 3,929 mt is a 5 percent reduction from the OFL (σ=0.41/P*=0.45). A unique sigma of 0.41 was calculated for widow rockfish since the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. However, the ACL of 2,000 mt is less than the ABC due to high uncertainty in estimated biomass, yet this level of allowable harvest will allow access to healthy co-occurring species, such as yellowtail rockfish. 120.2 mt is deducted from the ACL to accommodate the Tribal fishery (100 mt), the incidental open access fishery (3.3 mt), EFP catch (9 mt), and research catch (7.9 mt), resulting in a fishery HG of 1,880 mt.

[gg] Yellowtail rockfish. A 2013 yellowtail rockfish stock assessment was conducted for the portion of the population north of 40°10′ N. lat. The estimated stock depletion is 69 percent of its unfished biomass in 2013. The OFL of 7,218 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 6,590 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) as it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 1,029.6 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (3 mt), EFP catch (10 mt), and research catch (16.6 mt), resulting in a fishery HG of 5,560 mt.

[hh] Minor Nearshore Rockfish north. The OFL for Minor Nearshore Rockfish north of 40°10′ N. lat. of 88 mt is the sum of the OFL contributions for the component species managed in the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (*i.e.,* blue rockfish in California, brown rockfish, China rockfish, and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 77 mt is the summed contribution of the ABCs for the component species. The ACL of 69 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks plus the ACL contributions for blue rockfish in California and China rockfish where the 40–10 adjustment was applied to the ABC contributions for these two stocks, because those stocks are in the precautionary zone. No deductions are made to the ACL, thus the fishery HG is equal to the ACL, which is 69 mt. Between 40°10′ N. lat. and 42° N. lat. the Minor Nearshore Rockfish complex north has a harvest guideline of 23.7 mt. Blue rockfish south of 42° N. lat. has a species-specific HG, described in footnote kk.

[ii] Minor Shelf Rockfish north. The OFL for Minor Shelf Rockfish north of 40°10′ N. lat. of 2,209 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (*i.e.,* greenspotted rockfish between 40°10′ and 42° N. lat. and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,944 mt is the summed contribution of the ABCs for the component species. The ACL of 1,944 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution because the stock is in the precautionary zone (the ACL is slightly less than the ABC but rounds to the ABC value). 72 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (26 mt), EFP catch (3 mt), and research catch (13.4 mt), resulting in a fishery HG of 1,872 mt.

[jj] Minor Slope Rockfish north. The OFL for Minor Slope Rockfish north of 40°10′ N. lat. of 1,831 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the Minor Slope Rockfish complexes are based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.36 for other category 1 stocks (*i.e.,* splitnose rockfish), a sigma value of 0.72 for category 2 stocks (*i.e.,* rougheye rockfish, blackspotted rockfish and sharpchin rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish since the variance in estimated spawning biomass was greater than the 0.36 used as a proxy for other category

1 stocks. The resulting ABC of 1,693 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the ABC because all the assessed component stocks are above the target biomass of $B_{40\%}$. 64 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (1 mt), and research catch (8.1 mt), resulting in a fishery HG of 1,629 mt.

[kk] Minor Nearshore Rockfish south. The OFL for the Minor Nearshore Rockfish complex south of 40°10′ N. lat. of 1,313 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Nearshore Rockfish complex is based on a sigma value of 0.36 for category 1 stocks (*i.e.,* gopher rockfish north of 34°27′ N. lat.), a sigma value of 0.72 for category 2 stocks (*i.e.,* blue rockfish north of 34°27′ N. lat., brown rockfish, China rockfish, and copper rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,169 mt is the summed contribution of the ABCs for the component species. The ACL of 1,114 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution for blue rockfish north of 34°27′ N. lat. where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 4 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.6 mt), resulting in a fishery HG of 1,110 mt. Blue rockfish south of 42° N. lat. has a species-specific HG set equal to the 40–10-adjusted ACL for the portion of the stock north of 34°27′ N. lat. (133.6 mt) plus the ABC contribution for the unassessed portion of the stock south of 34°27′ N. lat. (60.8 mt). The California (*i.e.,* south of 42° N. lat.) blue rockfish HG is 194.4 mt.

[ll] Minor Shelf Rockfish south. The OFL for the Minor Shelf Rockfish complex south of 40°10′ N. lat. of 1,918 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the southern Minor Shelf Rockfish complex is based on a sigma value of 0.72 for category 2 stocks (*i.e.,* greenspotted and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,625 mt is the summed contribution of the ABCs for the component species. The ACL of 1,624 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 49 mt is deducted from the ACL to accommodate the incidental open access fishery (9 mt), EFP catch (30 mt), and research catch (9.6 mt), resulting in a fishery HG of 1,575 mt.

[mm] Minor Slope Rockfish south. The OFL for the Minor Slope Rockfish complex south of 40°10′ N. lat. of 813 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Slope Rockfish complex is based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.72 for category 2 stocks (*i.e.,* blackgill rockfish, rougheye rockfish, blackspotted rockfish, and sharpchin rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish since the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 705 mt is the summed contribution of the ABCs for the component species. The ACL of 693 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of blackgill rockfish where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 20 mt is deducted from the ACL to accommodate the incidental open access fishery (17 mt), EFP catch (1 mt), and research catch (2 mt), resulting in a fishery HG of 673 mt. Blackgill rockfish has a species-specific HG set equal to the species' contribution to 40–10-adjusted ACL. The blackgill rockfish HG is 114 mt.

[nn] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with species-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include butter sole, curlfin sole, flathead sole, Pacific sanddab (assessed in 2013 but the assessment results were too uncertain to inform harvest specifications), rock sole, sand sole, and rex sole (assessed in 2013). The Other Flatfish OFL of 11,453 mt is based on the sum of the OFL contributions of the component stocks. The ABC of 8,749 mt is based on a sigma value of 0.72 for category 2 stocks (*i.e.,* rex sole) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.40. The ACL is set equal to the ABC since all of the assessed stocks (*i.e.,* Pacific sanddabs and rex sole) were above their target biomass of $B_{25\%}$. 204 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (19 mt), resulting in a fishery HG of 8,545 mt.

[oo] Other Fish. The Other Fish complex is comprised of kelp greenling coastwide, cabezon off Washington, and leopard shark coastwide. These species are unassessed. The OFL of 291 mt is the sum of the OFL contributions for kelp greenling off California (the SSC has not approved methods for calculating the OFL contributions for kelp greenling off Oregon and Washington), cabezon off Washington, and leopard shark coastwide. The ABC of 242 mt is the sum of ABC contributions for kelp greenling off California, cabezon off Washington and leopard shark coastwide calculated by applying a P* of 0.45 and a sigma of 1.44 to the OFL contributions for those stocks. The ACL is set equal to the ABC. There are no deductions from the ACL so the fishery HG is equal to the ACL of 242 mt.

Table 1b to Part 660, Subpart C – 2015, Allocations by Species or Species Group. (Weight in Metric Tons)

Species	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	Mt	%	Mt
BOCACCIO a/	S of 40°10' N. lat.	340.7	N/A	81.9	N/A	258.8
CANARY ROCKFISH a/ b/	Coastwide	106.8	N/A	56.9	N/A	49.9
COWCOD a/ c/	S of 40°10' N. lat.	4	N/A	1.4	N/A	2.6
DARKBLOTCHED ROCKFISH d/	Coastwide	317.2	95%	301.3	5%	15.9
PACIFIC OCEAN PERCH e/	N of 40°10' N. lat.	143	95%	135.9	5%	7.2
PETRALE SOLE a/	Coastwide	2,579.40	N/A	2,544.4	N/A	35
YELLOWEYE ROCKFISH a/	Coastwide	12.2	N/A	1	N/A	11.2
Arrowtooth flounder	Coastwide	3,410	95%	3,239	5%	170
Chilipepper	S of 40°10' N. lat.	1,604	75%	1,203	25%	401
Dover sole	Coastwide	48,406	95%	45,986	5%	2,420
English sole	Coastwide	9,640	95%	9,158	5%	482
Lingcod	N of 40'10° N. lat.	2,552	45%	1,148	55%	1,404
Lingcod	S of 40'10° N. lat.	995	45%	448	55%	547
Longnose skate a/	Coastwide	1,927	90%	1,734	10%	193
Longspine thornyhead	N of 34°27' N. lat.	3,124	95%	2,967	5%	156
Pacific cod	Coastwide	1,091	95%	1,036	5%	55
Pacific whiting	Coastwide	266,684	100%	266,684	0%	0
Sablefish	N of 36° N. lat.	0	See Table 1 c			
Sablefish	S of 36° N. lat.	1,714	42%	720	58%	994
Shortspine thornyhead	N of 34°27' N. lat.	1,686	95%	1,601	5%	84
Shortspine thornyhead	S of 34°27' N. lat.	881	NA	50	NA	831
Splitnose	S of 40°10' N. lat.	1,705	95%	1,619	5%	85
Starry flounder	Coastwide	1,524	50%	762	50%	762
Widow rockfish f/	Coastwide	1,880	91%	1,711	9%	169
Yellowtail rockfish	N of 40°10' N. lat.	5,560	88%	4,893	12%	667
Minor Shelf Rockfish complex a/	N of 40°10' N. lat.	1,872	60.20%	1,127	39.80%	745
Minor Shelf Rockfish complex a/	S of 40°10' N. lat.	1,575	12.20%	192	87.80%	1,383
Minor Slope Rockfish complex	N of 40°10' N. lat.	1,629	81%	1,319	19%	309
Minor Slope Rockfish complex	S of 40°10' N. lat.	673	63%	424	37%	249
Other Flatfish complex	Coastwide	8,545	90%	7,691	10%	855

a/ Allocations decided through the biennial specification process.

b/ 13.7 mt of the total trawl allocation of canary rockfish is allocated to the at-sea whiting fisheries, as follows: 5.7 mt for the mothership fishery, and 8.0 mt for the catcher/processor fishery.

c/ The cowcod fishery harvest guideline is further reduced to an ACT of 4.0 mt.

d/ Consistent with regulations at §660.55(c), 9 percent (27.1 mt) of the total trawl allocation for darkblotched rockfish is allocated to the whiting fisheries, as follows: 11.4 mt for the shorebased IFQ fishery, 6.5 mt for the mothership fishery, and 9.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

e/ Consistent with regulations at §660.55(c), 30 mt of the total trawl allocation for POP is allocated to the whiting fisheries, as follows: 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

f/ Consistent with regulations at §660.55(c), 500 mt of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 210 mt for the shorebased IFQ fishery, 120 mt for the mothership fishery, and 170 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

* * * * *

■ 4. In § 660.131, revise paragraph (h) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(h) *Reapportionment of Pacific whiting.* (1) Upon receipt of written notice to the Regional Administrator from the tribe(s) participating in the fishery that they do not intend to use a portion of the tribal allocation, the Regional Administrator may, no earlier than 7 days following notice to other treaty tribes with rights to whiting, reapportion any remainder to the other sectors of the trawl fishery as soon as practicable after receiving such notice. If no such reapportionment has occurred prior to September 15 of the fishing year, the Regional Administrator will, based on discussions with representatives of the tribes participating in the Pacific whiting fishery for that fishing year, consider the tribal harvests to date and catch projections for the remainder of the year relative to the tribal allocation of Pacific whiting, as specified at § 660.50. That portion of the tribal allocation that the Regional Administrator determines will not be used by the end of the fishing year may be reapportioned to the other sectors of the trawl fishery on September 15 or as soon as practicable thereafter. Subsequent reapportionments may be made based on subsequent determinations by the Regional Administrator based on the factors described above in order to ensure full utilization of the resource. However, no reapportionments will occur after December 1 of the fishing year.

(2) NMFS will reapportion unused tribal allocation to the other sectors of the trawl fishery in proportion to their initial allocations.

(3) The reapportionment of surplus whiting will be made effective immediately by actual notice under the automatic action authority provided at § 660.60(d)(1).

(4) Estimates of the portion of the tribal allocation that will not be used by the end of the fishing year will be based on the best information available to the Regional Administrator.

■ 5. In § 660.140, revise paragraph (d)(1)(ii)(D) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ species	Management area	2015 shorebased trawl allocation (mt)	2016 shorebased trawl allocation (mt)
Arrowtooth flounder		3,193.93	3,033.38
BOCACCIO	South of 40°10′ N. lat	81.89	85.02
CANARY ROCKFISH		43.26	44.48
Chilipepper	South of 40°10′ N. lat	1,203.00	1,196.25
COWCOD	South of 40°10′ N. lat	1.44	1.44
DARKBLOTCHED ROCKFISH		285.61	292.81
Dover sole		45,980.80	45,980.80
English sole		9,153.19	6,636.64
Lingcod	North of 40°10′ N. lat	1,133.32	1,083.37
Lingcod	South of 40°10′ N. lat	447.71	421.61
Longspine thornyhead	North of 34°27′ N. lat	2,962.33	2,815.08
Minor Shelf Rockfish complex	North of 40°10′ N. lat	1,091.70	1,096.52
Minor Shelf Rockfish complex	South of 40°10′ N. lat	192.20	192.32
Minor Slope Rockfish complex	North of 40°10′ N. lat	1,219.41	1,229.94
Minor Slope Rockfish complex	South of 40°10′ N. lat	423.99	425.25
Other Flatfish complex		7,670.50	6,315.10
Pacific cod		1,031.41	1,031.41
PACIFIC OCEAN PERCH	North of 40°10′ N. lat	118.45	124.15
Pacific Whiting		112,007.45	
PETRALE SOLE		2,539.40	2,633.40
Sablefish	North of 36° N. lat	2,199.37	2,411.24
Sablefish	South of 36° N. lat	719.88	787.50
Shortspine thornyhead	North of 34°27′ N. lat	1,581.49	1,563.44
Shortspine thornyhead	South of 34°27′ N. lat	50.00	50.00
Splitnose rockfish	South of 40°10′ N. lat	1,619.28	1,648.73
Starry flounder		756.85	759.35
Widow rockfish		1,420.62	1,420.62
YELLOWEYE ROCKFISH		1.00	1.08
Yellowtail rockfish	North of 40°10′ N. lat	4,593.15	4,376.67

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[FR Doc. 2015–11607 Filed 5–13–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 93
Thursday, May 14, 2015

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

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2013–BT–STD–0006]

Commercial Fans and Blowers Working Group: Notice of Open Meeting

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

ACTION: Notice of open meetings.

SUMMARY: DOE announces a series of meetings of the Fans and Blowers Working Group. The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Unless otherwise specified above, the meetings will be held at U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register at *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=25.*

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

The meetings will be held:

- May 18–19, 2015;
- June 3–4, 2015 (950 L'Enfant Plaza, 7th Floor, SW., Washington, DC)
- June 22, 2015;
- June 23, 2015 (950 L'Enfant Plaza, 7th Floor, SW., Washington, DC)
- July 21–22, 2015 (Air Movement and Control Association International, Chicago IL area) and
- August 4–5, 2015

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) 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, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

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.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on May 8, 2015.

Kathleen B. Hogan,

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

[FR Doc. 2015–11663 Filed 5–13–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1273; Directorate Identifier 2014–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This proposed AD was prompted by reports of unreliable performance of the fuel scavenge system. This proposed AD would require changing the main fuel tank water scavenge system, center fuel tank fuel scavenge system, certain electrical panels; related investigative actions, and corrective actions if necessary; and for certain airplanes, changing to give redundant control of the center override/jettison fuel pumps and main jettison fuel pumps. We are proposing this AD to prevent fuel exhaustion and subsequent power loss of all engines due to loss of capability to scavenge fuel in the center fuel tank.

DATES: We must receive comments on this proposed AD by June 29, 2015.

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

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

For Boeing service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

For GE Aviation service information identified in this proposed AD, contact GE Aviation Fleet Support, 1 Neumann Way, Cincinnati, OH 45215; telephone 513–552–3272; Email: *aviation.fleetsupport@ge.com;* Internet *http://www.geaviation.com.*

You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221. Boeing service information is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1273.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1273; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6499; fax: 425–917–6590; email: *Takahisa.Kobayashi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–1273; Directorate Identifier 2014–NM–194–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of unreliable performance of the fuel scavenge system. During flight, any water in the fuel can sink to the bottom of the fuel tank. This water can enter the fuel scavenge inlets and can then freeze as it travels from the body center fuel tank into the colder fuel scavenge tubes in the left and right cheek center fuel tanks. The flow of scavenge fuel from the center fuel tank to the main fuel tanks can then decrease or stop. When this occurs, as much as 2,600 pounds of fuel can remain unavailable during flight. On airplanes with airplane information management system (AIMS) version 13 or older, this can occur without warning. If the fuel quantity decreases to the quantity of the unavailable fuel, then in-flight shutdown of both engines could occur.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014. This service bulletin describes a main fuel tank water scavenge system change and a center fuel tank fuel scavenge system change.

We also reviewed Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010, and Revision 6, dated July 11, 2013, which describe changes to give redundant control of the center override/jettison fuel pumps and main jettison fuel pumps.

We also reviewed GE Aviation Service Bulletin 5000ELM–28–075, Revision 1, dated August 5, 2014, and GE Aviation Service Bulletin 6000ELM–28–076, Revision 1, dated August 5, 2014, which describe wiring changes in the P110 and P210 panels, respectively.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

Concurrent Actions

For airplanes in Group 10, Configuration 1, Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, specifies prior accomplishment of the actions described in Boeing Service Bulletin 777–28–0060, dated January 30, 2009; Revision 1, dated October 2, 2009; or Revision 2, dated January 08, 2010; which describe single aft auxiliary fuel tank removal and cargo system installation. Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, does not address the configuration of airplanes with the auxiliary fuel tank installed. Group 10 airplanes were delivered with the auxiliary fuel tank installed, and therefore the actions specified in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, cannot be accomplished on those airplanes unless the auxiliary fuel tank is removed. This proposed AD does not require removal of the auxiliary fuel tank from airplanes in Group 10, Configuration 1, in accordance with the actions specified in Boeing Service Bulletin 777–28–0060, dated January 30, 2009; Revision 1, dated October 2, 2009; or Revision 2, dated January 08, 2010. However, if the auxiliary fuel tank is removed, this proposed AD requires accomplishment of the actions specified in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, prior to the threshold or concurrent with the auxiliary tank removal, and prohibits re-installation of the auxiliary fuel tank thereafter. Once modifications are developed and approved to address an airplane configuration having an auxiliary fuel tank installed, we might consider additional rulemaking to address the fuel scavenge system in those airplanes.

For airplanes in Group 10, Configuration 2, Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, specifies prior accomplishment of the actions described in Work Package 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–28–0062, dated June 30, 2009; or Revision 1, dated November 18, 2010; which describes removal of one body auxiliary fuel tank (Work Package 1 describes installation of the auxiliary fuel tank). Boeing

Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, does not address the configuration of airplanes with the auxiliary fuel tank installed. Group 10 airplanes are delivered with the auxiliary fuel tank installed, and therefore, the actions specified in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, cannot be accomplished on those airplanes unless the auxiliary fuel tank is removed. This proposed AD does not require removal of the auxiliary fuel tank from airplanes in Group 10, Configuration 2, in accordance with the actions specified in Work Package 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–28–0062, dated June 30, 2009; or Revision 1, dated November 18, 2010. However, if the auxiliary fuel tank is removed, this proposed AD requires accomplishment of the actions specified in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, prior to the threshold or concurrent with the auxiliary tank removal, and prohibits re-installation of the auxiliary fuel tank thereafter. Once modifications are developed and approved to address an airplane configuration having an auxiliary fuel tank installed, we might consider additional rulemaking to address the fuel scavenge system in those airplanes.

Related Rulemaking

AD 2011–09–05, Amendment 39–16667 (77 FR 22305, April 21, 2011), specifies the actions described in Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010. For certain airplanes, the actions described in this service bulletin must be done prior to the accomplishment of the actions described in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

The phrase ''related investigative actions'' might be used in this proposed AD. ''Related investigative actions'' are follow-on actions that: (1) Are related to the primary actions, and (2) are actions that further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase ''corrective actions'' might be used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as RC (required for compliance) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

Steps that are identified as RC in any service information must be done to comply with the proposed AD. However, steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC will require approval of an AMOC.

Costs of Compliance

We estimate that this proposed AD affects 55 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Fuel system modification	200 work-hours × $85 per hour = $17,000	$68,535	$85,535	$4,704,425
P110 and P210 panel modification	2 work-hours × $85 per hour = $170	0	170	9,350

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

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2015–1273; Directorate Identifier 2014–NM–194–AD.

(a) Comments Due Date

We must receive comments by June 29, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and –777F series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports of unreliable performance of the fuel scavenge system. We are issuing this AD to prevent fuel exhaustion and subsequent power loss of all engines due to loss of capability to scavenge fuel in the center fuel tank.

(f) Compliance

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

(g) Fuel Scavenge System Changes, Wiring Changes, and Software Changes

For airplanes identified in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, except for Group 10 airplanes on which the actions specified in Boeing Service Bulletin 777–28–0060; or Work Package 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–28–0062, have not been accomplished: Within 60 months after the effective date of this AD, do the applicable actions specified in paragraphs (g)(1) through (g)(6) of this AD; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014. Do all applicable related investigative and corrective actions before further flight.

(1) Do applicable mechanical changes to the main fuel tank water scavenge system and center fuel tank fuel scavenge system.

(2) Install relays and related equipment on the P301 and P302 panels in the main equipment center.

(3) Do applicable wiring changes between the P105, P110 and P301 panels, and between the P200, P205, P210 and P302 panels.

(4) Do wiring changes in the P105 panel.

(5) Install new electrical load management system 2 (ELMS2) software.

(6) Do a functional test consisting of operational tests, a leak test, system tests, and a fuel scavenge system functional test. If any of the tests fail, before further flight accomplish corrective actions and repeat the test and applicable corrective actions until the test is passed.

(h) Concurrent Actions

(1) For Group 13 through 16 airplanes, as identified in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, prior to accomplishing the actions required by paragraph (g) of this AD, install a new P301 panel on the left side of the airplane, install a new P302 panel on the right side of the airplane, and change the wiring; or perform bonding resistance measurements and rework the airplane installations; as applicable; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010; or Boeing Service Bulletin 777–28A0047, Revision 6, dated July 11, 2013.

(2) For airplanes identified in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, except for Group 10 airplanes on which the actions described in Boeing Service Bulletin 777–28–0060; or Work Package 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–28–0062, have not been accomplished: Prior to or concurrently with accomplishing the requirements of paragraph (g) of this AD, do wiring changes in the P110 and P210 panels, in accordance with the applicable Accomplishment Instructions of GE Aviation Service bulletin 5000ELM–28–075, Revision 1, dated August 5, 2014; and GE Aviation Service Bulletin 6000ELM–28–076, Revision 1, dated August 5, 2014.

(i) Parts Installation Prohibition

For Group 10 airplanes, as identified in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, after completion of the actions required by paragraph (g) of this AD, no person may install an auxiliary fuel tank on any Group 10 airplane.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h)(1) of this AD, if those actions were performed before May 26, 2011 (the effective date of AD 2011–09–05, Amendment 39–16667 (77 FR 22305, April 21, 2011)) using a service bulletin identified in paragraph (j)(1) or (j)(2) of this AD, which are not incorporated by reference in this AD.

(1) Boeing Service Bulletin 777–28A0047, Revision 3, dated June 11, 2009.

(2) Boeing Service Bulletin 777–28A0047, Revision 4, dated May 20, 2010.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) If any service information contains steps that are identified as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC require approval of an AMOC.

(l) Related Information

(1) For more information about this AD, Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6499; fax: 425–917–6590; email: *Takahisa.Kobayashi@faa.gov.*

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* For GE Aviation service information identified in this proposed AD, contact GE Aviation Fleet Support, 1 Neumann Way, Cincinnati, OH 45215; telephone 513–552–3272; Email: *aviation.fleetsupport@ge.com;* Internet *http://www.geaviation.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 28, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–10469 Filed 5–13–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1480; Directorate Identifier 2014–SW–071–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2002–13–11 for Eurocopter France (now Airbus Helicopters) Model EC120B helicopters. AD 2002–13–11 currently requires installing front and side covers on the cabin floor to protect the yaw control at both the pilot and co-pilot stations. Since we issued AD 2002–13–11, we have determined that the required actions should apply only to the cabin's right-hand pilot station. This proposed AD would retain the requirements of AD 2002–13–11 but for only the pilot station. These proposed actions are intended to prevent an object from sliding between the canopy and the cabin floor, loss of yaw control, and subsequent loss of helicopter control.

DATES: We must receive comments on this proposed AD by July 13, 2015.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the Direction Generale De L'Aviation Civile (DGAC) AD, the economic evaluation, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

On June 25, 2002, we issued AD 2002–13–11, Amendment 39–12799 (67 FR 45295, July 9, 2002) for certain serial-numbered Eurocopter France (now Airbus Helicopters) Model EC120B helicopters. AD 2002–13–11 requires installing front and side covers to protect the yaw control at the pilot and co-pilot flight control stations. AD 2002–13–11 was prompted by a report of a mobile phone falling between the windshield canopy and the cabin floor, jamming the yaw control pedal. Those actions were intended to prevent an object from sliding between the canopy and the cabin floor, loss of yaw control, and subsequent loss of helicopter control.

AD 2002–13–11 was prompted by AD No. 2001–386–007(A), dated September 5, 2001, issued by the DGAC, the airworthiness authority for France, to correct an unsafe condition for the Model EC120B helicopter. The DGAC advises of a yaw-control jamming caused by an object that slid between the canopy and the cabin floor.

The DGAC AD required that front and lateral protections be installed no later than December 31, 2001, in compliance with paragraph 2.B of Eurocopter Alert Service Bulletin No. 67A005, Revision 0, dated July 30, 2001. DGAC revised its AD and issued AD 2001–386–007(A) R1, dated February 6, 2002 (AD 2001–386–007(A)R1), which extended the compliance deadline to February 28, 2002.

Actions Since AD 2002–13–11 Was Issued

Since we issued AD 2002–13–11 (67 FR 45295, July 9, 2002), we have determined that the front and side protections are required only at the pilot station. Therefore, we are proposing to remove the final sentence in paragraph (a) of the Compliance section of the AD, which requires that if the helicopter has flight controls at both the pilot and co-pilot stations, the protections must be

installed at both stations. Also, since we issued AD 2002–13–11, the format in which we issue ADs has been revised, resulting in changes to the content and ordering of the AD paragraphs. Eurocopter France has also changed its name to Airbus Helicopters. This proposed AD reflects that change and updates the contact information to obtain service documentation.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, the DGAC, which was France's technical representative when AD 2001–386–007(A)R1 was issued, notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed Eurocopter Alert Service Bulletin No. 67A005, Revision 0, dated July 30, 2001 (ASB), which specifies installing a front and side protection on the cabin floor to protect the yaw control. The DGAC classified this ASB as mandatory and issued AD No. 2001–386–007(A), dated September 5, 2001, and AD 2001–386–007(A)R1, dated February 6, 2002, to ensure the continued airworthiness of these helicopters in France.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

Proposed AD Requirements

This proposed AD would require, within 90 days, installing front and side covers (protections) on the cabin floor at the pilot station to protect the yaw control.

Costs of Compliance

We estimate that this proposed AD would affect 37 helicopters of U.S. Registry and that labor costs would average $85 a work-hour. Required parts would cost about $584 and it would take about 2 work-hours to accomplish the proposed actions. Based on these figures, we estimate that the total cost of this proposed AD would be $754 per helicopter and $27,898 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–13–11, Amendment 39–12799 (67 FR 45295, July 9, 2002), and adding the following new AD:

Airbus Helicopters (Previously Eurocopter France): Docket No. FAA–2015–1480; Directorate Identifier 2014–SW–071–AD.

(a) Applicability

This AD applies to Model EC120B helicopters, serial numbers 1001 through 1278, inclusive, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an object sliding between the canopy and the cabin floor. This condition could result in loss of yaw control and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2002–13–11, Amendment 39–12799 (67 FR 45295, July 9, 2002).

(d) Comments Due Date

We must receive comments by July 13, 2015.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

Within 90 days, install front and side covers (protections) to protect the yaw control in accordance with the Accomplishment Instructions, paragraph 2.B., of Eurocopter Alert Service Bulletin No. 67A005, Revision 0, dated July 30, 2001 (ASB), except the correct reference to the Aircraft Maintenance Manual in subparagraph 2.B.2 of the ASB is 20–10–00, 3–8.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in the Direction General De L'Aviation Civile (DGAC) AD No. 67A005, Revision 1, dated February 6, 2002. You may view the DGAC AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–1480.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

Issued in Fort Worth, Texas, on May 1, 2015.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–11522 Filed 5–13–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1417; Directorate Identifier 2013–NM–159–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2004–20–14, for all Airbus Model A300 B4–2C, B4–103, and B4–203 airplanes; and all Model A300 B4–600, B4–600R, and F4–600R series airplanes. AD 2004–20–14 requires repetitive inspections to detect cracking of the splice fitting at fuselage frame (FR) 47 between stringers 24 and 26 (left- and right-hand sides), and corrective actions if necessary. Since we issued AD 2004–20–14, we have determined that the inspection compliance time and repetitive inspection interval must be reduced to allow timely detection of cracks in the splice fitting at fuselage FR 47. This proposed AD would reduce the inspection compliance time and repetitive inspection intervals, and add Model A300 C4–605R Variant F airplanes to the applicability. We are proposing this AD to detect and correct cracking of the splice fitting at fuselage FR 47, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 29, 2015.

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

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

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–1417; Directorate Identifier 2013–NM–159–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On September 30, 2004, we issued AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004), which superseded AD 2001–03–14, Amendment 39–12118 (66 FR 10957, February 21, 2001). AD 2004–20–14 requires actions intended to address an unsafe condition on all Airbus Model A300 B4–2C, B4–103, and B4–203 airplanes; and all Model A300 B4–600, B4–600R, and F4–600R series airplanes. Since we issued AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004), we have determined that the inspection compliance time and repetitive inspection interval must be reduced to allow timely detection of cracks in the splice fitting at fuselage FR 47, and that Model A300 C4–605R Variant F airplanes must be added to the applicability.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0184R1, dated August 22, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> In order to prevent crack development in the fastener holes at Frame (FR) 47 splicing joint on A300 aeroplanes, Airbus developed modification (Mod) 5890 for aeroplanes in production and issued corresponding Service Bulletin (SB) A300–53–0199 for aeroplanes in service.
>
> Subsequently, cracks were found on FR47 splice fitting between stringers (STRG) 24 and 26 on A300 aeroplanes previously modified by SB A300–53–0199.
>
> This condition, if not detected and corrected, could reduce the structural integrity of the aeroplane.
>
> To address this potential unsafe condition, DGAC [Direction Générale de l'Aviation Civile] France issued AD 2002–184 *http://ad.easa.europa.eu/blob/2002184tb_superseded.pdf/AD_F-2002-184_2* [which corresponds to FAA AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)], superseding [DGAC France] AD 85–152–069 and [DGAC France] AD 1999–515–298 [which corresponds to FAA AD 2001–03–14, Amendment 39–12118 (66 FR 10957, February 21, 2001)], to require repetitive High Frequency Eddy Current (HFEC) rotating probe inspections of the splice fitting between STRG 24 and 26 and,

depending on findings, corrective action(s). DGAC France AD 2002–184(B) expanded the applicability to A300–600 aeroplanes, which have the same design.

Since that [DGAC France] AD was issued, a fleet survey and updated Fatigue and Damage Tolerance analyses have been performed in order to substantiate the second A300–600 Extended Service Goal (ESG2) exercise. The results of these analyses have determined that the inspection threshold and intervals for A300–600 aeroplanes must be reduced to allow timely detection of these cracks and the accomplishment of an applicable corrective action.

For the reasons described above, [EASA] AD 2013–0184 retains the requirements of DGAC France AD 2002–184, which is superseded, but requires accomplishment of the actions for A300–600 aeroplanes within the new thresholds and intervals introduced with Revision 05 of Airbus SB [service bulletin] A300–53–6123 [dated August 1, 2011] .

This [EASA] AD was revised to correct the splices Part Numbers (P/N) in Table 4 of Appendix 1 of this [EASA] AD. Also, reference is now made to Airbus SB A300–53–6123 Revision 06 [dated September 28, 2011], which corrected this mistake compared to Revision 05.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–1417.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service bulletins:

• Airbus Service Bulletin A300–53–6123, Revision 06, including Inspection Report, dated September 28, 2011. This service bulletin describes procedures for inspection for cracking of the splice fitting at fuselage FR 47 between stringers 24 and 26, and corrective actions.

• Airbus Service Bulletin A300–53–0350, Revision 03, including Appendix 03, dated July 26, 2007. This service bulletin describes procedures for inspection to detect cracking of the splice fitting at fuselage FR 47 between stringers 24 and 26, and corrective actions.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 72 airplanes of U.S. registry.

We also estimate that it would take up to 14 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $85,680, or $1,190 per product.

In addition, we estimate that any necessary follow-on actions would take up to 204 work-hours and require parts costing up to $37,000, for a cost of up to $54,340 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004), and adding the following new AD:

Airbus: Docket No. FAA–2015–1417; Directorate Identifier 2013–NM–159–AD.

(a) Comments Due Date

We must receive comments by June 29, 2015.

(b) Affected ADs

This AD replaces AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004).

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(5) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A300 B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Airbus Model A300 B4–605R and B4–622R airplanes.

(4) Airbus Model A300 F4–605R and F4–622R airplanes.

(5) Airbus Model A300 C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a determination that the inspection compliance time and repetitive inspection interval must be reduced to allow timely detection of cracks in the splice fitting at fuselage frame (FR) 47. We are issuing this AD to detect and correct cracking of the splice fitting at fuselage FR 47, which could result in reduced structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Retained Repetitive Inspections for Airplanes Defined in Airbus Service Bulletin A300–53–0350, Revision 02, Dated November 12, 2002, With New Service Information

This paragraph restates the requirements of paragraph (a) of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004), with new service information. For airplanes defined in Airbus Service Bulletin A300–53–0350, Revision 02, dated November 12, 2002: Do a high frequency eddy current (HFEC) inspection to detect cracking of the splice fitting at fuselage FR 47 between stringers 24 and 26 (left- and right-hand sides), at the applicable times specified in paragraph (g)(1) or (g)(2) of this AD. Repeat the inspection thereafter at the earlier of the flight-cycle/flight-hour intervals specified in the applicable column in Table 2 of Figure 1 and Sheet 1 of the Accomplishment Instructions of Airbus Service Bulletin A300–53–0350, Revision 02, excluding Appendix 01, dated November 12, 2002. Do the inspections in accordance with Airbus Service Bulletin A300–53–0350, Revision 02, excluding Appendix 01, dated November 12, 2002; or Revision 03, excluding Appendix 01, dated July 26, 2007. As of the effective date of this AD, use only Airbus Service Bulletin A300–53–0350, Revision 03, excluding Appendix 01, dated July 26, 2007.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of November 17, 2004 (the effective date of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)): Do the initial inspection at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) At the earlier of the flight-cycle/flight-hour intervals after November 17, 2004 (the effective date of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)), as specified in the applicable column in Table 1 of Figure 1 and Sheet 1 of the Accomplishment Instructions of Airbus Service Bulletin A300–53–0350, Revision 02, excluding Appendix 01, dated November 12, 2002.

(ii) Within 750 flight cycles or 1,500 flight hours after November 17, 2004 (the effective date of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)), whichever is first.

(2) For airplanes that have accumulated fewer than 20,000 total flight cycles as of November 17, 2004 (the effective date of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)): Do the initial inspection at the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) At the earlier of the flight-cycle/flight-hour intervals after November 17, 2004 (the effective date of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)), as specified in the applicable column in Table 1 of Figure 1 and Sheet 1 of the Accomplishment Instructions of Airbus Service Bulletin A300–53–0350, Revision 02, excluding Appendix 01, dated November 12, 2002.

(ii) Within 1,800 flight cycles or 3,000 flight hours after November 17, 2004 (the effective date of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)), whichever is first.

(h) Retained Repetitive Inspections for Airplanes Defined in Airbus Service Bulletin A300–53–6123, Revision 02, Dated November 12, 2002, With New Service Information

This paragraph restates the requirements of paragraph (b) of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004), with new service information. For airplanes defined in Airbus Service Bulletin A300–53–6123, Revision 02, dated November 12, 2002: Do the HFEC inspection required by paragraph (g) of this AD at the applicable times specified in paragraph (h)(1) or (h)(2) of this AD. Repeat the inspection thereafter at the earlier of the flight-cycle/flight-hour intervals specified in the applicable column in Table 2 of Figure 1 and Sheet 1 of the Accomplishment Instructions of Airbus Service Bulletin A300–53–6123, Revision 02, excluding Appendix 01, dated November 12, 2002. Do the inspections in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6123, Revision 02, excluding Appendix 01, dated November 12, 2002, excluding Appendix 01; or Revision 06, dated September 28, 2011. Accomplishment of the actions required by paragraph (j) of this AD terminates the requirements of this paragraph.

(1) For airplanes that have accumulated 10,000 or more total flight cycles as of November 17, 2004 (the effective date of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)): Do the initial inspection within 750 flight cycles or 1,900 flight hours after November 17, 2004, whichever is first.

(2) For airplanes that have accumulated fewer than 10,000 total flight cycles as of November 17, 2004 (the effective date of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)): Do the initial inspection at the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) At the earlier of the flight-cycle/flight-hour intervals after November 17, 2004 (the effective date of AD 2004–2–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)), as specified in the applicable column in Table 1 of Figure 1 and Sheet 1 of the Accomplishment Instructions of Airbus Service Bulletin A300–53–6123, Revision 02, excluding Appendix 01, dated November 12, 2002.

(ii) Within 1,500 flight cycles or 3,800 flight hours after November 17, 2004 (the effective date of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004)), whichever is first.

(i) Retained Repair, With Revised Repair Instructions

This paragraph restates the requirements of paragraph (c) of AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004), with revised repair instructions. Repair any cracking found during any inspection required by paragraphs (g) and (h) this AD before further flight, in accordance with Airbus Service Bulletin A300–53–0350, Revision 02, excluding Appendix 01, dated November 12, 2002; or Airbus Service Bulletin A300–53–6123, Revision 02, excluding Appendix 01, dated November 12, 2002; as applicable. Where Airbus Service Bulletin A300–53–0350, Revision 02, excluding Appendix 01, dated November 12, 2002; or Airbus Service Bulletin A300–53–6123, Revision 02, excluding Appendix 01, dated November 12, 2002; specify to contact Airbus in case of certain crack findings, this AD requires that a repair be accomplished before further flight using a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent); or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(j) New Requirement of This AD: Repetitive Inspections

For airplanes identified in paragraphs (c)(2) through (c)(5) of this AD: At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD: Remove the fasteners and accomplish an HFEC rotating probe inspection for cracking of the splice fitting between stringer 24 and 26, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6123, Revision 06, excluding Inspection Report, dated September 28, 2011. Repeat the inspection thereafter at the applicable intervals specified in paragraphs (k)(1) through (k)(4) of this AD. If no cracking is found: Before further flight after each inspection, install new fasteners, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6123, Revision 06, excluding Inspection Report, dated September 28, 2011. Accomplishment of the initial inspection required by this paragraph terminates the requirements of paragraph (h) of this AD for that airplane.

(1) For airplanes on which Airbus Modification 5890, or the actions specified in Airbus Service Bulletin A300–53–6131, have not been done: At the applicable time specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this AD.

(i) For airplanes that have an average flight time (AFT) that is more than 1.5 hours: At the later of the times specified in paragraphs (j)(1)(i)(A) and (j)(1)(i)(B) of this AD.

(A) Before the accumulation of 2,500 total flight cycles or 5,500 total flight hours, whichever occurs first.

(B) Within 800 flight cycles or 1,750 flight hours, whichever occurs first after the effective date of this AD.

(ii) For airplanes that have an AFT that is equal to or less than 1.5 hours: At the later of the times specified in paragraphs (j)(1)(ii)(A) and (j)(1)(ii)(B) of this AD.

(A) Before the accumulation of 2,700 total flight cycles or 4,100 total flight hours, whichever occurs first.

(B) Within 800 flight cycles or 1,750 flight hours, whichever occurs first after the effective date of this AD.

(2) For airplanes that have accomplished Airbus Modification 5890, or have accomplished the actions specified in Airbus Service Bulletin A300–53–6131: At the applicable time specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD.

(i) For airplanes that have an AFT that is more than 1.5 hours: At the later of the times specified in paragraphs (j)(2)(i)(A) and (j)(2)(i)(B) of this AD.

(A) Before the accumulation of 6,800 total flight cycles or 14,700 total flight hours, whichever occurs first.

(B) Within 800 flight cycles or 1,750 flight hours, whichever occurs first after the effective date of this AD.

(ii) For airplanes that have an AFT that is equal to or less than 1.5 hours: At the later of the times specified in paragraphs (j)(2)(ii)(A) and (j)(2)(ii)(B) of this AD.

(A) Before the accumulation of 7,300 total flight cycles or 11,000 total flight hours, whichever occurs first.

(B) Within 800 flight cycles or 1,750 flight hours, whichever occurs first after the effective date of this AD.

(k) New Requirement of This AD: Repetitive Inspection Intervals for Actions Specified in Paragraph (j) of This AD

For airplanes identified in paragraphs (c)(2) through (c)(5) of this AD: Repeat the inspection required by paragraph (j) of this AD at the applicable time specified in paragraphs (k)(1) through (k)(4) of this AD.

(1) For airplanes that have an AFT of more than 1.5 hours and meet the applicable conditions specified in paragraphs (k)(1)(i) through (k)(1)(iv) of this AD: Inspect at intervals not to exceed 800 flight cycles or 1,750 flight hours, whichever occurs first.

(i) Airplanes on which Airbus Modification 5890 has not been accomplished.

(ii) Airplanes on which the actions specified in Airbus Service Bulletin A300–53–6131 have not been accomplished.

(iii) Airplanes on which Airbus Modification 5890 has been accomplished and have splice part number (P/N) A53834139–202/–203 installed.

(iv) Airplanes on which the actions specified in Airbus Service Bulletin A300–53–6131 have been accomplished and have splice P/N A53834139–202/–203 installed.

(2) For airplanes that have an AFT that is equal to or less than 1.5 hours and meet the applicable conditions specified in paragraphs (k)(2)(i) through (k)(2)(iv) of this AD: Inspect at intervals not to exceed 800 flight cycles or 1,750 flight hours.

(i) Airplanes on which Airbus Modification 5890 has not been accomplished.

(ii) Airplanes on which the actions specified in Airbus Service Bulletin A300–53–6131 have not been accomplished.

(iii) Airplanes on which Airbus Modification 5890 has been accomplished and have splice P/N A53834139–202/–203 installed.

(iv) Airplanes on which the actions described in Airbus Service Bulletin A300–53–6131 have been accomplished and have splice P/N A53834139–202/–203 installed.

(3) For airplanes that have an AFT of more than 1.5 hours and meet the applicable conditions specified in paragraphs (k)(3)(i) and (k)(3)(ii) of this AD: Inspect at intervals not to exceed 800 flight cycles or 1,750 flight hours.

(i) Airplanes on which Airbus Modification 5890 has been accomplished and have splice P/N A53812635–200/–201/–202/–203 installed.

(ii) Airplanes on which the actions specified in Airbus Service Bulletin A300–53–6131 have been accomplished and have splice P/N A53812635–200/–201/–202/–203 installed.

(4) For the airplanes that have an AFT that is equal to or less than 1.5 hours and meet the applicable conditions specified in paragraphs (k)(4)(i) and (k)(4)(ii) of this AD: Inspect at intervals not to exceed 800 flight cycles or 1,750 flight hours.

(i) Airplanes on which Airbus Modification 5890 has been accomplished and have splice P/N A53812635–200/–201/–202/–203 installed.

(ii) Airplanes on which the actions specified in Airbus Service Bulletin A300–53–6131 have been accomplished and have splice P/N A53812635–200/–201/–202/–203 installed.

(l) New Requirement of This AD: Corrective Actions

If, during any inspection required by paragraph (j) or (k) of this AD, any cracks are found: Before further flight, do the applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6123, Revision 06, excluding Inspection Report, dated September 28, 2011; except as provided by paragraph (m) of this AD.

(m) New Requirement of This AD: Exception to Service Information

If any crack is found during any inspection required by paragraph (j) or (k) of this AD and Airbus Service Bulletin A300–53–6123, Revision 06, excluding Inspection Report, dated September 28, 2011; or Airbus Service Bulletin A300–53–0350, Revision 03, dated July 26, 2007; specifies to contact Airbus: Before further flight, repair the crack using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(n) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (j) and (l) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (n)(1) through (n)(7) of this AD.

(1) Airbus Service Bulletin A300–53–0350, Revision 01, dated December 18, 2001, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A300–53–0350, Revision 02, excluding Appendix 01, dated November 12, 2002, which is incorporated by reference in AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004).

(3) Airbus Service Bulletin A300–53–6123, Revision 01, dated December 18, 2001, which is not incorporated by reference in this AD.

(4) Airbus Service Bulletin A300–53–6123, Revision 02, excluding Appendix 01, dated November 12, 2002, which is incorporated by reference in AD 2004–20–14, Amendment 39–13819 (69 FR 60809, October 13, 2004).

(5) Airbus Service Bulletin A300–53–6123, Revision 03, dated August 20, 2004, which is not incorporated by reference in this AD.

(6) Airbus Service Bulletin A300–53–6123, Revision 04, dated April 25, 2008, which is not incorporated by reference in this AD.

(7) Airbus Service Bulletin A300–53–6123, Revision 05, dated August 1, 2011, which is not incorporated by reference in this AD.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Airworthiness Directive 2013–0184R1, dated August 22, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1417.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France;

telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 30, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–11554 Filed 5–13–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–417N]

Schedules of Controlled Substances: Placement of UR–144, XLR11, and AKB48 Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes placing (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR–144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule I of the Controlled Substances Act. This proposed scheduling action is pursuant to the Controlled Substance Act which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities, or possess), or propose to handle UR–144, XLR11, or AKB48.

DATES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before June 15, 2015. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may file a request for hearing, notice of appearance, or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45, 1316.47, 1316.48, or 1316.49, as applicable. Requests for hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before June 15, 2015.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–417N'' on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on Regulations.gov. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: **Federal Register** Representative/ODL, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

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

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing, Notice of Appearance at Hearing, Waiver of an Opportunity for a Hearing or To Participate in a Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. In accordance with 21 CFR 1308.44 (a)–(c), requests for hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing may be submitted only by interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).'' 21 CFR 1300.01. Such requests or notices must conform to the requirements of 21 CFR 1308.44 (a) or (b), and 1316.47 or 1316.48, as applicable, and include a statement of interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and 1316.49, including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of a hearing is restricted to: ''find[ing] that such drug or other substance has a potential for abuse, and . . . mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed . . .'' All requests for hearing and waivers of participation must be sent to the DEA using the address information provided above.

Legal Authority

The DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purposes of this action. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c) and the current list of scheduled substances is published at 21 CFR part 1308. 21 U.S.C. 812(a).

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he . . . finds that such drug or other substance has a potential for abuse, and . . . makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed . . . .'' The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on her own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS),[1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This proposed action is supported by a recommendation from the Assistant Secretary of the HHS and an evaluation of all other relevant data by the DEA. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles, or proposes to handle, UR–144, XLR11, or AKB48.

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

Background

On April 12, 2013, the Deputy Administrator of the DEA published a Notice of Intent to temporarily place (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR–144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) into schedule I pursuant to the temporary scheduling provisions of the CSA (78 FR 21858). On May 16, 2013, the Deputy Administrator of the DEA published a Final Order in the **Federal Register** (78 FR 28735) amending 21 CFR 1308.11(h) to temporarily place these three synthetic cannabinoids into schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). That Final Order, which became effective on the date of publication, was based on findings by the Deputy Administrator of the DEA that the temporary scheduling of these three synthetic cannabinoids was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). At the time the Final Order took effect, Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) required that the temporary scheduling of a substance expire at the end of two years from the date of issuance of the scheduling order, and it provided that, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance could be extended for up to 1 year. Pursuant to 21 U.S.C. 811(h)(2), the temporary scheduling of UR–144, XLR11, and AKB48 expires on May 15, 2015, unless extended. An extension of the temporary order is being ordered by the DEA Administrator in a separate action.

As described in the Final Order published on May 16, 2013, UR–144, XLR11, and AKB48 are synthetic cannabinoids that are pharmacologically similar to delta 9-tetrahydrocannabinol (Δ^9–THC) and JWH–018. While UR–144, XLR11, and AKB48 have been used as research chemicals and/or studied due to their misuse and abuse, based on the review of the scientific literature, there are no known medical uses for UR–144, XLR11, and AKB48. The Assistant Secretary of Health for the HHS has advised that there are no exemptions or approvals in effect for UR–144, XLR11, and AKB48 under section 505 (21 U.S.C. 355) of the Federal Food, Drug and Cosmetic Act (FD&C Act). As stated by the HHS, UR–144, XLR11, and AKB48 have no known accepted medical use. They are not the

subject of any approved new drug applications (NDA) or investigational new drug applications (IND), and are not currently marketed as approved drug products.

Proposed Determination to Schedule UR–144, XLR11, and AKB48

Pursuant to 21 U.S.C. 811(a)(1), proceedings to add a drug or substance to those controlled under the CSA may be initiated by the Attorney General, or her delegate, the DEA Administrator. On August 31, 2013, the DEA requested a scientific and medical evaluation and scheduling recommendation from the Assistant Secretary of Health for the HHS for UR–144, XLR11, and AKB48 pursuant to 21 U.S.C. 811(b). Upon receipt of the scientific and medical evaluation and scheduling recommendations from the HHS, the DEA reviewed the documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of UR–144, XLR11, and AKB48 pursuant to 21 U.S.C. 811(c).

Included below is a brief summary of each of the eight factors as analyzed by the HHS and the DEA, and as considered by the DEA in this proposed action. Please note that both the DEA and the HHS analyses are available under ''Supporting and Related Material'' of the public docket for this proposed rule at *http://www.regulations.gov* under docket number DEA–417N.

1. *The Drug's Actual or Relative Potential for Abuse:* As described by the HHS, the abuse potential of UR–144, XLR11, and AKB48 is associated with their ability to evoke pharmacological effects similar to those evoked by other schedule I substances that have a high potential for abuse such as Δ^9–THC and JWH–018.

The legislative history of the CSA suggests the DEA consider the following factors when determining whether a particular drug or substance has a potential for abuse: [2]

(1) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community;

(2) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels;

(3) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

(4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

The substances UR–144, XLR11, and AKB48 share pharmacological properties with schedule I substances, including Δ^9–THC and JWH–018. Evaluations in animal models, specifically in drug discrimination studies, have demonstrated that cyclopropoylindoles (such as UR–144 and XLR11) and indazole-3-carboximides (such as AKB48) produce Δ^9–THC-like discriminative stimulus effects. There have also been numerous anecdotal self-reports substantiating that these substances and their products are abused by humans for their hallucinogenic effects, as well as published reports indicating an increase in the abuse of these substances. State public health departments and poison control centers have issued warnings in response to adverse health effects associated with herbal incense products containing synthetic cannabinoids which include: tachycardia, elevated blood pressure, unconsciousness, tremors, seizures, vomiting, hallucinations, agitation, anxiety, pallor, numbness, and tingling. Numerous public health and poison control centers have issued warnings regarding the abuse of synthetic cannabinoids and their associated products. Law enforcement has also encountered incidents of exposure, primarily in response to the smoking of products purported to be laced with these substances.

2. *Scientific Evidence of the Drug's Pharmacological Effects, If Known:* As described by the HHS, UR–144, XLR11, and AKB48 have all been shown to bind to the cannabinoid 1 (CB1) receptor, act as agonists at the CB1 receptor, and substitute fully for the discriminative stimulus effects of Δ^9–THC in the drug discrimination assay. To date, no human pharmacological studies involving UR–144, XLR11, or AKB48 have been reported.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* Synthetic cannabinoids emerged in the early 1980s. They were originally designed to investigate structure activity relationships (SAR) based on the potent substance, 9-nor-9β-hydroxyhexahydrocannabinol (HHC). Interest in the various structural classes was generated by the mouse vas deferens (MVD) and prostaglandin synthetase activity of pravadoline and subsequent findings of affinity to the cannabinoid receptor.

The emergence of synthetic cannabinoids in the designer drug market can be traced back to the initial forensic laboratory confirmation in December 2008 at a forensic laboratory in Frankfurt, Germany that announced the identification of JWH–018 in samples of herbal incense, and others shortly thereafter. UR–144 and XLR11 are classified as cyclopropoylindoles whereas AKB48 is classified as an indazole-3-carboximide. While UR–144 was first developed as a research tool by Abbott Laboratories, XLR11 and AKB48 were not designed for use in the laboratory and began showing up in drug seizures in 2011.

The DEA is not aware of any currently accepted medical use or NDAs for UR–144, XLR11, or AKB48. A letter dated February 14, 2013, was sent from the DEA Deputy Administrator to the Assistant Secretary for the HHS as notification of intent to temporarily place these three substances into schedule I and solicit comments, including whether there was an exemption or if an approval was in effect for the substances in question under the FD&C Act. The Assistant Secretary of HHS responded that there were no current INDs or NDAs for these synthetic cannabinoids in a letter addressed to the DEA Deputy Administrator dated March 14, 2013. In their recent scheduling recommendation, the HHS reiterated that UR–144, XLR11, and AKB48 have no known accepted medical use, are not the subject of any approved NDAs or INDs, and are not currently marketed as any approved drug products.

4. *Its History and Current Pattern of Abuse:* Synthetic cannabinoids were first reported in the United States in a December 2008 encounter, where a shipment of ''Spice'' was seized and analyzed by U.S. Customs and Border Protection in Dayton, Ohio. Additionally, around the same time, in December 2008, JWH–018 and cannabicyclohexanol were being identified by German forensic laboratories. Though these substances were identified in 2008, these substances likely existed and were abused some time prior to their identification.

Since the initial identification of JWH–018 in December 2008, many additional synthetic cannabinoids have been found laced on designer drug products abused for their psychoactive

[2] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); 1970 U.S.C.C.A.N. 4566, 4601.

effects. The popularity of synthetic cannabinoids has increased tremendously since January 2010 in the United States based on seizure exhibits and media reports. This trend is similar and consistent with the increased popularity of synthetic cannabinoids in Europe since 2008. Synthetic cannabinoids are being encountered in most regions of the United States with the substances found as adulterants on plant material or being abused alone as self-reported on internet discussion boards.

Data gathered from published studies, supplemented by internet discussion Web sites, and personal communications demonstrate that these products are being abused mainly by smoking for their psychoactive properties and are marketed as ''legal'' alternatives to marijuana. This characterization and their reputation as potent herbal intoxicants increased their popularity. These substances alone or laced on plant material have the potential to be extremely harmful due to their method of manufacture and the potency of the substances. Smoking mixtures of these substances for the purpose of achieving intoxication has resulted in numerous emergency room visits and calls to poison control centers. Numerous states, local jurisdictions, and the international community have also controlled these substances.

Youth appear to be the primary abusers of synthetic cannabinoids and synthetic cannabinoid-containing products, as supported by law enforcement encounters and reports from emergency rooms; however, all age groups have been discussed in media reports as abusing these substances and related products. More recently, clandestinely produced synthetic cannabinoid products have been encountered in liquid forms, and law enforcement has communicated that these designer drug products are intended for use in electronic cigarettes and vaporizers.

5. *The Scope, Duration, and Significance of Abuse:* As stated by the HHS, based on their pharmacological properties, it is reasonable to assume that, if uncontrolled, the scope, duration, and significance of UR–144, XLR11, and AKB48 abuse could be similar to marijuana. National Forensic Laboratory Information Systems (NFLIS),[3] a national database capturing data from forensic laboratories, has reported 46,324 reports (January 2010 to December 2014) related to UR–144, XLR11, and AKB48 from 44 states (query date: April 30, 2015). From January 1, 2010, through December 31, 2014, according to the System to Retrieve Information on Drug Evidence (STRIDE) and STARLiMS data,[4] there were 2,049 reports involving 245 cases for UR–144, 4,041 reports involving 487 cases for XLR11, and 201 reports involving 63 cases for AKB48 (query date: April 30, 2015). Recently, numerous exposure incidents have been documented by poison control centers in the United States as the abuse of synthetic cannabinoids has become associated with both acute and long-term public health and safety concerns. The American Association of Poison Control Centers (AAPCC) has reported exposure calls corresponding to products purportedly laced with synthetic cannabinoids since 2011, although the data provided do not generally include biological sample testing that would confirm the specific cannabinoid. AAPCC reported 6,968 exposure calls in 2011 and 5,230 calls in 2012. While exposure calls decreased in 2013 to 2,668, calls involving exposure to a synthetic cannabinoid rebounded in 2014 reaching 3,680. In addition, 623 calls have been reported from January 1 through February 28, 2015. A majority of exposure incidents resulted in seeking medical attention at health care facilities. In 2010, the Substance Abuse and Mental Health Services Administration (SAMHSA) reported 11,406 emergency department visits involving a synthetic cannabinoid product. In 2011, SAMHSA reported the number of emergency department visits involving a synthetic cannabinoid product had increased 2.5 times to 28,531.

6. *What, if Any, Risk There is to the Public Health:* Law enforcement, military, and public health officials have reported exposure incidents that demonstrate the dangers associated with abuse of synthetic cannabinoids to both the individual abusers and those connected to the misuse and abuse of these substances not intended for human use. Warnings regarding the dangers associated with abuse of synthetic cannabinoids and their products have been issued by numerous state public health departments, poison control centers, and private organizations. Detailed product analyses describe large variations in the amount of synthetic cannabinoid laced on the plant material even within samplings of the same product. These unknowns present a significant risk of danger to the abusing individuals. Some of the common clinical effects reported in emergency rooms in response to the abuse of synthetic cannabinoids include: vomiting, anxiety, agitation, irritability, seizures, hallucinations, tachycardia, elevated blood pressure, and loss of consciousness.

At least one death has been reported in Minnesota following ingestion of UR–144 and XLR11. In 2013, in California, a 27-year-old female developed hypertension, tachycardia, and rhabdomyolisis prior to being intubated and admitted to the ICU for protection of the airway following ingestion of a synthetic cannabinoid product containing XLR11. A 33-year-old-man developed acute cerebral ischemia and infarction shortly following the use of XLR11. In addition, reports have detailed various driving under the influence cases where users operated a motor vehicle while intoxicated with synthetic cannabinoids, including UR–144, XLR11, and/or AKB48.

In February 2013, the Centers for Disease Control (CDC) reported on an association between XLR11 exposure and acute kidney injury. The CDC examined 16 patients with acute kidney injury who reported recent smoking of synthetic cannabinoids. Seven of the 16 patients smoked substances that were positive for XLR11 or its metabolite. In addition, one of these seven cases also tested positive for UR–144.

Additional cases reported adverse health effects including nausea, vomiting, agitation, panic attacks, involuntary muscle twitching and confusion following ingestion of UR–144 and/or XLR11.

7. *Its Psychic or Physiological Dependence Liability:* Chronic abuse of synthetic cannabinoids has been linked to signs of addiction and withdrawal. According to the HHS, the pharmacologic profiles of UR–144, XLR11, and AKB48 strongly suggest that they possess physiological and psychological dependence liability that is similar to that of delta-9-tetrahydrocannabinol (Δ^9–THC) (schedule I) and JWH–018 (schedule I). Additionally, tolerance to these drugs may develop fairly rapidly with larger doses being required to achieve the desired effect. However, there are no studies or case reports that document the psychic or physiological dependence potential of UR–144, XLR11, or AKB48.

[3] NFLIS is a program of the DEA that collects drug identification results from drug cases analyzed by other Federal, State, and local forensic laboratories.

[4] STRIDE collected the results of drug evidence analyzed at DEA laboratories and reflects evidence submitted by the DEA, other Federal law enforcement agencies, and some local law enforcement agencies. On October 1, 2014, STARLiMS replaced STRIDE as the DEA laboratory drug evidence data system of record.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* UR–144, XLR11, and AKB48 are not considered immediate precursors of any controlled substance of the CSA as defined by 21 U.S.C 802(23).

Conclusion: Based on consideration of the scientific and medical evaluations and accompanying recommendation of the HHS, and based on the DEA's considerations of its own eight-factor analysis, the DEA finds that these facts and all other relevant data constitute substantial evidence of the potential for abuse of UR–144, XLR11, and AKB48. As such, the DEA hereby proposes to schedule UR–144, XLR11, and AKB48 as controlled substances under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator of the DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(1), finds that:

(1) (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR–144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) have a high potential for abuse that is comparable to other schedule I substances such as delta-9-tetrahydrocannabinol (Δ^9–THC) and JWH–018;

(2) (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR–144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) have no currently accepted medical use in treatment in the United States; and

(3) There is a lack of accepted safety for use of (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR–144, XLR11) and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) under medical supervision.

Based on these findings, the Administrator of the DEA concludes that (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR–144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) including their salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrant control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

Requirements for Handling UR–144, XLR11 and AKB48

If this rule is finalized as proposed, persons who handle UR–144, XLR11, or AKB48 would continue [5] to be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, possession, importing, and exporting of schedule I controlled substances, including those listed below:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) UR–144, XLR11, or AKB48, or who desires to handle UR–144, XLR11, or AKB48 would be required to be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Security.* UR–144, XLR11, and AKB48 would be subject to schedule I security requirements and would need to be handled and stored pursuant to 21 U.S.C. 821, 823, and 871(b), and in accordance with 21 CFR 1301.71–1301.93.

3. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of UR–144, XLR11, and AKB48 would need to be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

4. *Quota.* Only registered manufacturers would be permitted to manufacture UR–144, XLR11, or AKB48 in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. *Inventory.* Every DEA registrant who possesses any quantity of UR–144, XLR11, and/or AKB48 on the effective date of the final rule would be required to continue to maintain an inventory of all stocks of UR–144, XLR11, and/or AKB48 on hand, pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports with respect to UR–144, XLR11, and/or AKB48 pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes UR–144, XLR11, and/or AKB48 would be required to comply with the order form requirements, pursuant to 21 U.S.C. 828, and 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of UR–144, XLR11, and AKB48 would need to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving UR–144, XLR11, or AKB48 not authorized by, or in violation of the CSA or its implementing regulations would be unlawful, and could subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to Section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

[5] UR–144, XLR11, and AKB48 are currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h).

Executive Order 13175

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. On May 16, 2013, the Deputy Administrator published a Final Order in the **Federal Register** (78 FR 28735) amending 21 CFR 1308.11(h) to temporarily place these three synthetic cannabinoids into schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). All entities that currently handle or plan to handle these synthetic cannabinoids are estimated to have already established and implemented the systems and processes required to handle UR–144, XLR11, and AKB48. Therefore, the DEA anticipates that this proposed rule will impose minimal or no economic impact on businesses that currently handle UR–144, XLR11, or AKB48 for lawful purposes. This estimate applies to entities large and small. Therefore, DEA has concluded that this proposed rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, the DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*), that this action would not result in any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of the UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.11 by:

■ a. Adding paragraphs (g)(16) through (18); and

■ b. Removing paragraphs (h)(1) through (3) and redesignating paragraphs (h)(4) through (23) as paragraphs (h)(1) through (20), respectively.

The additions read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(16) (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144)	(7144)
(17) [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR–144, XLR11)	(7011)
(18) *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48)	(7048)

* * * * *

Dated: May 12, 2015.

Michele M. Leonhart,

Administrator.

[FR Doc. 2015–11762 Filed 5–13–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0045]

RIN 1625–AA08

Special Local Regulation; Southeast Drag Boat Championships, Atlantic Intracoastal Waterway; Bucksport, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Southeast Drag Boat Championships, a series of high-speed boat races. The event is scheduled to take place from 10 a.m. on July 24, 2015, through 6 p.m. on July 26, 2015. Approximately 50 high-speed race boats are anticipated to participate in the races. This special local regulation is necessary to provide for the safety of life and property on navigable waters of the United States during the event. This special local regulation would temporarily restrict vessel traffic in a portion of the Atlantic Intracoastal Waterway. Persons and vessels that are not participating in the races would be prohibited from entering, transiting through, anchoring in, or remaining within the restricted area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 15, 2015. Requests for public meetings must be received by the Coast Guard on or before May 29, 2015.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer Christopher Ruleman, Sector Charleston Office of Waterways Management, Coast Guard;

telephone (843)–740–3184, email *Christopher.L.Ruleman@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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2015–0045] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2015–0045) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before May 29, 2015 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact the person named in the **FOR FURTHER INFORMATION CONTACT** section, above.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the proposed rule is to ensure safety of life and property on the navigable waters of the United States during the Southeast Drag Boat Championships.

C. Discussion of Proposed Rule

Starting July 24, 2015, through July 26, 2015, the Southeast Drag Boat Championships plans to hold a series of high-speed boat races. The event will be held on a portion of the Atlantic Intracoastal Waterway in Bucksport, South Carolina. Approximately 50 high-speed race boats are anticipated to participate in the races.

The proposed rule would establish a special local regulation that encompasses certain waters of the Intracoastal Waterway in Bucksport, South Carolina. The special local regulation would be effective from July 24, 2015, through July 26, 2015, and enforced from 10 a.m. until 6 p.m. on each of those days. The special local regulation would consist of a regulated area around vessels participating in the event. The regulated area would be as follows: 200 ft. off of Bucksport Marinas pier center channel between Daybeacon 35 (LLNR 33835), and 100 yards south of light 38 (LLNR 33845). Persons and vessels, except those participating in the race, would be prohibited from entering, transiting through, anchoring, or remaining within the regulated area unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization would be required to comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard would provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

regulation would be enforced for only eight hours a day over a three-day period; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement periods; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard would provide advance notification of the regulated area to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 proposed rule will not have a significant economic impact on a substantial number of small entities: This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Intracoastal Waterway encompassed within the regulated area from 10 a.m. until 6 p.m. from July 24, 2015, through July 26, 2015. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

3. Assistance for Small Entities

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a special local regulation issued in conjunction with a regatta or marine parade that will be enforced from 10:00 a.m. until 6:00 p.m. on July 24, 2015 through July 26, 2015. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant

Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.T07–0045 to read as follows:

§ 100.T07–0045 Special Local Regulations; Southeast Drag Boat Championships, Atlantic Intracoastal Waterway, Bucksport, SC.

(a) *Regulated area.* All waters of the Atlantic Intracoastal Waterway encompassed by a line connecting the following points: point 1 in position 33°39′13″ N 079°05′36″ W; thence west to point 2 in position 33°39′17″ N 079°05′46″ W; thence south to point 3 in position 33°38′53″ N 079°05′39″ W; thence east to point 4 in position 33°38′54″ N 079°05′31″ W; thence north back to point 1. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels, except those participating in the Southeast Drag Boat Championships, or serving as safety vessels, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced daily from 10 a.m. until 6 p.m. starting July 24, 2015, through July 26, 2015.

Dated: April 8, 2015.

B.D. Falk,

Commander, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2015–11676 Filed 5–13–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0285]

RIN 1625–AA09

Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the South Park Bridge, on the Duwamish Waterway, mile 3.8, at Seattle, WA. Highway traffic patterns have changed since this rule was last amended, therefore the bridge owner (King County) is proposing to update the operating schedule to better meet the needs of local highway users by matching drawbridge closure hours to current commuter traffic patterns. This change would improve movement of rush hour highway traffic while having minimal impact to maritime waterway traffic.

DATES: Comments and related material must reach the Coast Guard on or before July 13, 2015. Requests for public meetings must be received by the Coast Guard on or before June 15, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0285 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206–220–7282; email *d13-pf-d13bridges@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

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code
WSDOT Washington State Department of Transportation
SDOT Seattle Department of Transportation

A. Public Participation and Request for Comments

We encourage you to participate in this proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG–2015–0285), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We

recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2015–0285] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2015–0285) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting that reaches the Coast Guard on or before June 15, 2015 using one of the methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 499, 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

King County owns and operates the South Park Bridge, and requested a permanent change to the existing operating regulation. The new proposed regulation would update drawbridge closure times to better meet current highway traffic demands, and match the closure schedule with the First Avenue South Bridge, mile 2.5, on the Duwamish Waterway.

The South Park Bascule Bridge, at Seattle WA, on the Duwamish Waterway at mile 3.8, is subject to tidal influence and has at least 15 feet of water depth at the bridge site at mean lower low water. Vessel traffic on the Duwamish waterway consists of vessels ranging from small pleasure craft, sailboats, small tribal fishing boats, and commercial tug and tow, and mega yachts.

The inefficiencies of the current drawbridge operating regulation were brought to the Coast Guard's attention by the bridge owner. The current drawbridge operating regulation was written to accommodate commuter patterns associated with morning and afternoon highway traffic associated with Boeing Plant number 2 shift changes. As of 2011 this plant is no longer operational and therefore highway traffic densities have changed. Adjusting the existing drawbridge regulation would better meet the needs of current highway users by matching drawbridge closure hours to the First Avenue South Bridge and current commuter traffic patterns, while having minimal impact on maritime navigation.

C. Discussion of Proposed Rule

The Coast Guard would amend the operating regulations at 33 CFR 117.1041(a)(2). The regulation currently states that South Park Bridge need not be opened for the passage of vessels from 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., Monday through Friday, except Federal holidays. The Coast Guard proposes to change the opening schedule such that the bridge need not be opened for the passage of vessels from 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:00 p.m., Monday through Friday, except Federal holidays other than Columbus Day. The purpose of this proposed amendment is to increase efficiency for current highway traffic demands in light of changed traffic patterns, and match the closure schedule with the First Avenue South Bridge on the Duwamish Waterway. All other requirements regarding the South Park Bridge under 33 CFR 117.1041 will remain the same.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of 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 finding based on the fact that the proposed change does not significantly alter the duration and time frame of the current closure schedule.

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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial and recreational vessels looking to transit the bridge and associated maritime waterfront facilities (*e.g.*, marina, marine repair/construction businesses) beyond the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect twice a day for three hours when vessel traffic is low and vehicle traffic is high. Vessels that can safely transit under the bridge may do so at any time. Furthermore, most vessels that would be affected by this proposed rule are already operating according to the current restricted operating regulation for the First Avenue South Bridge.

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

3. Assistance for Small Entities

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

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes (make sure we send NPRM to local Tribe).

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply amends the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.1041, revise the section heading and paragraph (a)(2) to read as follows:

§ 117.1041 Drawbridge Operation Regulation; Duwamish River; Seattle, WA.

(a) * * *

(2) The draw of the South Park Bridge, mile 3.8, need not be opened for the passage of vessels from 6:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 6:00 p.m., Monday through Friday except, Federal holidays, other than Columbus Day.

* * * * *

Dated: April 29, 2015.

R.T. Gromlich,

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

[FR Doc. 2015–11677 Filed 5–13–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–9927–40]

Lead; Renovation, Repair and Painting Program; Lead Test Kit Stakeholder Meeting; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: On April 22, 2008, EPA published the Lead Renovation, Repair and Painting (RRP) rule, which established performance recognition criteria for lead test kits for use as an option to determine if regulated lead-based paint is not present in target housing and child-occupied facilities. The use of an EPA-recognized lead test kit, when used by a trained professional, can reliably determine that regulated lead-based paint is not present by virtue of a negative result. The RRP rule also established negative-response and positive-response criteria outlined in the CFR for lead test kits recognized by EPA. This document announces EPA's plan to hold a meeting for interested stakeholders and the public on Thursday, June 4, 2015. At the meeting, EPA is seeking information related to: The existing market for lead test kits as referenced in the 2008 RRP rule; the development or modification of lead test kit(s) that may meet EPA's positive-response criterion (in addition to the negative-response criterion); and other alternatives for lead-based paint field testing.

DATES: The meeting will be held on Thursday, June 4, 2015 from 10 a.m. to 12 p.m.

Requests to attend the meeting should be sent to the Agency's lead information Contact Us form at *http://www2.epa.gov/lead/forms/contact-us* or the technical information points of contact under **FOR FURTHER INFORMATION CONTACT**. Upon request, Web and telephone conferencing information will be provided for those who wish to attend the meeting remotely. RSVP responses confirming attendance to the meeting either in person or remotely should be sent to the Agency's lead information Contact Us form at *http://www2.epa.gov/lead/forms/contact-us* or the technical persons listed under **FOR FURTHER INFORMATION CONTACT** on or before May 26, 2015. Requests to share information on the related topics at the meeting should be sent to the Agency's lead information Contact Us form at *http://www2.epa.gov/lead/forms/contact-us* or the technical persons listed under **FOR FURTHER INFORMATION CONTACT** on or before May 26, 2015. Additionally, registered participants who wish to provide responses to the requested lead test kit topics during the meeting should notify the Agency via EPA's lead information Contact Us form at *http://www2.epa.gov/lead/forms/contact-us* or the technical persons listed under **FOR FURTHER INFORMATION CONTACT** on or before May 26, 2015.

To request accommodation of a disability, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**, preferably by May 26, 2015, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA William Jefferson Clinton East Building, 1201 Constitution Ave. NW., Washington, DC 20004.

Meeting participants and other interested parties who wish to respond in writing to the requested lead test kit topics outlined above, as well as the forthcoming Information Docket, may submit written materials identified by docket identification (ID) number EPA–HQ–OPPT–2005–0049, by one of the following methods:

- *Federal eRulemaking* Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, are available at *http://www.epa.gov/dockets.* The docket for this action will remain open until July 6, 2015.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Christina Wadlington, National Program Chemicals Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–1859; email address: *wadlington.christina@epa.gov* or Toiya Goodlow, National Program Chemicals Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–2305; email address: *goodlow.toiya@epa.gov.*

For general information contact: The National Lead Information Center, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: 1–800–424 –LEAD (5323); online information request form: *http://www2.epa.gov/lead/forms/lead-hotline-national-lead-information-center.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This document is directed to stakeholders that develop, manufacture and/or sell lead test kits or other lead-based paint field testing instruments. You may be potentially affected by this action if you manufacture or sell lead test kits, or if you use lead test kits to determine if lead-safe work practices are required under the RRP rule to perform renovations for compensation in target housing or child-occupied facilities. Examples of child-occupied facilities are day-care centers, preschools, and kindergarten classrooms.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket ID number EPA–HQ–OPPT–2005–0049, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA William Jefferson Clinton West Building, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20004. 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 OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.* EPA will provide further information regarding topics to be discussed at the meeting in an Information Document to registered participants. That information also will be posted on www2.epa.gov/lead and placed in the docket for this action.

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify this document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. Follow the detailed instructions as provided under **ADDRESSES**. Respond to specific questions posed by the Agency.

iii. Explain why you agree or disagree; suggest alternatives.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced by the Agency and others.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified in this document.

II. Background

In the **Federal Register** of April 22, 2008 (73 FR 21692) (FRL–8355–7), EPA published the Lead-Based Paint Renovation, Repair and Painting rule, which requires contractors to use lead-safe work practices during renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities built before 1978 unless a determination can be made that no lead-based paint would be disturbed during the renovation or repair. The use of an EPA-recognized lead test kit, when used by a trained professional, can reliably determine that regulated lead-based paint is not present by virtue of a negative result. The federal standards for lead-based paint in target housing and child-occupied facilities is a lead content in paint that equals or exceeds a level of 1.0 milligram per square centimeter (mg/cm^2) or 0.5 percent by weight. If regulated lead-based paint is not present, there is no requirement to employ lead-safe work practices under the RRP rule.

The RRP rule established negative-response and positive-response criteria outlined in 40 CFR 745.88(c) for lead test kits recognized by EPA. Lead test kits recognized before September 1, 2010 must meet only the negative-response criterion outlined in 40 CFR 745.88(c)(1). The negative-response criterion states that for paint containing lead at or above the regulated level, 1.0 mg/cm^2 or 0.5 percent by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5 percent of the time must be met. The recognition of kits that meet only this criterion will last until EPA publicizes its recognition of the first test kit that meets both of the criteria outlined in the rule.

Lead test kits recognized after September 1, 2010 must meet both the negative-response and positive-response criteria outlined in 40 CFR 745.88(c)(1)–(2). The positive-response criterion states that for paint containing lead below the regulated level, 1.0 mg/cm^2 or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time must be met. Qualitatively speaking, lead test kits recognized by EPA should also serve as a quick, inexpensive, reliable, and easy to perform option for lead-based paint testing in the field.

Despite the EPA's commitment of resources to this effort, to date no test kit has met both of the performance criteria outlined in the RRP rule. However, there are two EPA-recognized test kits commercially available nationwide that meet the false-negative criterion and continue to be recognized by EPA. Therefore, in an effort to understand the current state of the science for lead test kits and lead-based paint field testing alternatives, as well as the existing market and potential availability of additional test kits, EPA is soliciting input from relevant stakeholders. EPA is convening a meeting and webinar for interested stakeholders and the public on Thursday, June 4, 2015 to seek information related to: (1) The existing market for lead test kits as referenced in the 2008 RRP rule; (2) the development or modification of lead test kit(s) that may meet EPA's positive-response criterion (in addition to the negative-response criterion); and (3) other alternatives for lead-based paint field testing. EPA will provide further information regarding topics to be discussed at the meeting in an Information Document to be posted on www2.epa.gov/lead and placed in the docket for this action. Meeting participants and other interested parties who wish to respond in writing to the requested lead test kit topics outlined above, as well as the forthcoming Information Docket, may submit written materials to the docket until July 6, 2015.

III. References

As indicated under **ADDRESSES**, a docket has been established for this rulemaking under docket ID number EPA–HQ–OPPT–2005–0049. The docket includes this document and other information.

EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register**, April 22, 2008 (73 FR 21692) (FRL–8355–7).

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 8, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015–11669 Filed 5–13–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[156D0102DM/DS10700000/DMSN00000.000000/DX.10701.CEN00000]

RIN 1090–AB10

Privacy Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior is proposing to amend its regulations to exempt certain records in the Indian Arts and Crafts Board system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative law enforcement requirements.

DATES: Submit written comments on or before July 13, 2015.

ADDRESSES: Send written comments, identified by RIN number 1090–AB10, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240.
- *Email:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, *Privacy@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240. Email at *Privacy@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

An individual may request access to records containing information about him or herself, 5 U.S.C. 552a(b), (c) and (d). However, the Privacy Act authorizes Federal agencies to exempt systems of records from access by individuals under certain circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation, 5 U.S.C. 552a(k).

The Department of the Interior (DOI), Office of the Secretary, created the Indian Arts and Crafts Board, DOI–24, system of records to assist the Department of the Interior's Indian Arts and Crafts Board (IACB) in overseeing the implementation of the Indian Arts and Crafts Act of 1990, as amended. The purposes of this system of records include documenting investigations, including investigations by DOI law enforcement, of individuals or organizations that offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization within the United States. Additionally, the system helps the IACB manage its program activities, promote the economic development of American Indians and Alaska Natives of Federally recognized tribes through the expansion of the Indian arts and crafts market; provide promotional opportunities, general business advice, and information on the Indian Arts and Crafts Act to Native American artists, craftspeople, businesses, museums, and cultural centers of Federally recognized tribes; manage museum exhibitions and activities; and produce a source directory of American Indian and Alaska Native owned and operated arts and crafts businesses.

In this notice of proposed rulemaking, the Department of the Interior is proposing to exempt the Indian Arts and Crafts Board system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) because of criminal, civil, and administrative law enforcement requirements.

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''investigatory material compiled for law enforcement purposes

Because this system of records contains investigatory material compiled for law enforcement purposes within the provisions of 5 U.S.C. 552a(k)(2), the Department of the Interior proposes to exempt the Indian Arts and Crafts Board system of records from the following provisions: 5 U.S.C. 552a(c)(3), (d), (e)(1),(e)(4)(G) through (e)(4)(I), and (f). Where a release would not interfere with or adversely affect law enforcement activities, including but not limited to revealing sensitive information or compromising confidential sources, the exemption may be waived on a case-by-case basis. Exemptions from these particular subsections are justified for the following reasons:

1. 5 U.S.C. 552a(c)(3). This section requires an agency to make the accounting of each disclosure of records required by the Privacy Act available upon request to the individual named in the record. Release of the accounting of disclosures could alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation; endanger the physical safety of confidential sources, witnesses and their families; and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

2. 5 U.S.C. 552a(d); (e)(4)(G) and (e)(4)(H); and (f). These sections require an agency to provide notice and disclosure to individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. Granting access to investigatory records in the Indian Arts and Crafts Board system of records could inform the subject of an investigation of the existence of that investigation, the nature and scope of the information and evidence obtained, the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, as well as their families; lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; and disclose investigative techniques and procedures. In addition, granting access to such information could disclose security-sensitive, or confidential information and could constitute an unwarranted invasion of the personal privacy of others.

3. 5 U.S.C. 552a(e)(1). This section requires the agency to maintain information about an individual only to the extent that such information is relevant or necessary. The application of this provision could impair investigations and law enforcement, because it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is often only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation, but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot always be readily segregated. Furthermore, during the course of the investigation, an investigator may obtain information concerning the violation of laws outside the scope of the investigator's jurisdiction. In the interest of effective law enforcement, DOI investigators should retain this information, since it could aid in establishing patterns of criminal activity and provide valuable leads for other law enforcement agencies.

4. 5 U.S.C. 552a(e)(4)(I). This section requires an agency to provide public notice of the categories of sources of records in the system. To the extent this provision is construed to require more detailed disclosure than the broad, generic information currently published in the systems of records notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, and to protect the privacy and physical safety of witnesses and informants.

Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not a significant rule and has not reviewed it under the requirements of Executive Order 12866. We have evaluated the impacts of the rule as required by E.O. 12866 and have determined that it does not meet the criteria for a significant regulatory action. The results of our evaluation are given below.

(a) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

(b) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, concessions, loan programs, water contracts, management agreements, or the rights and obligations of their recipients.

(d) This rule does not raise any novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

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

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

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

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

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

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

(a) Does not unduly burden the judicial system.

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

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

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on Federally recognized Indian tribes.

9. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act

This rule does not constitute a major Federal action and would not have a significant effect on the quality of the human environment. Therefore, this rule does not require the preparation of an environmental assessment or environmental impact statement under the requirements of the National Environmental Policy Act of 1969.

11. Data Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

12. Effects on Energy Supply (E.O. 13211).

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

13. Clarity of This Regulation

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (H.R. 946), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and table wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

Dated: April 15, 2015.

Kristen J. Sarri,

Principal Deputy Assistant Secretary for Policy, Management and Budget.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR part 2 as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

■ 2. Amend § 2.254 by adding paragraph (b)(17) to read as follows:

§ 2.254 Exemptions.

* * * * *

(b) * * *

(17) Indian Arts and Crafts Board, DOI–24.

* * * * *

[FR Doc. 2015–11686 Filed 5–13–15; 8:45 am]

BILLING CODE 4334–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 07–245, GN Docket No. 09–51; DA 15–542]

Parties Asked To Refresh Record Regarding Petition to Reconsideration Cost Allocators Used To Calculate the Telecom Rate for Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) seeks to refresh the record on a petition for reconsideration or clarification filed by the National Cable and Telecommunications Association (NCTA), COMPTEL, and tw telecom inc. (Petitioners) in the above-referenced proceedings. Petitioners request that ''the rules be clarified or amended by specifying [that] the cost allocator to be applied [will be] based on the number of attaching entities.''

DATES: Comments are due on or before June 4, 2015 and reply comments are due on or before June 15, 2015.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–245 and GN Docket No. 09–51, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- 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: Jonathan Reel, Wireline Competition Bureau, Competition Policy Division, (202) 418–0637, or send an email to *johnathan.reel@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in WC Docket No. 07–245, GN Docket Nos. 09–51; DA 15–542 released on May 6, 2015. It is available on the Commission's Web site at *http://www.fcc.gov.*

I. Public Notice

1. By this document, the Wireline Competition Bureau (Bureau) seeks to refresh the record on a petition for reconsideration or clarification filed by the National Cable and Telecommunications Association (NCTA), COMPTEL, and tw telecom inc. (Petitioners) on June 8, 2011 in the above-referenced proceedings.

2. With respect to the rule concerning the calculation of pole attachment rates charged to telecommunications providers pursuant to section 224(e) of the Communications Act, Petitioners request that ''the rules be clarified or amended by specifying [that] the cost allocator to be applied [will be] based on the number of attaching entities.'' In support of this request, Petitioners state that, in the *2011 Pole Attachment Order,* ''the new formula adjusts the cost basis to 66 percent in urban service areas and to 44 percent in rural service areas. When paired with the presumptions that there are five entities on urban poles and three entities on rural poles, the illustrative calculation almost exactly equals the cable rate.'' Petitioners assert, however, that as written the rule may be read to address only the cases of the presumed three and five attaching entities. Therefore, Petitioners request that the Commission clarify or expand the telecom rate formula to ''provide the corresponding cost adjustments scaled to other entity counts.'' Petitioners request, alternatively, that ''the Commission could adopt the proposal in the *2010 Pole Attachment FNPRM* to establish the maximum just and reasonable rate as the higher of the cable rate . . . or the 'lower bound' telecom rate obtained by excluding capital costs from the definition of 'cost of providing space' in the existing telecom rate formula.''

3. A Public Notice released on June 20, 2011 announced the comment cycle for the Petition. The Commission subsequently published that document *A National Broadband Plan For Our Future;* Petition for Reconsideration, 76 *FR 44495, July 26, 2011.* The Commission received comment both for and against the Petition.

4. After the close of the comment cycle concerning the Petition, on February 26, 2013, the U.S. Court of Appeals for the DC Circuit upheld the *2011 Pole Attachment Order,* including the Commission's rule for calculating the pole attachment rate for providers of telecommunications services. Among other things, the Court determined that the term ''cost,'' as used in section 224(e), is open to a wide range of reasonable interpretations; that the Commission's methodology for apportioning ''cost'' among pole attaches for purposes of the telecom rate is consistent with section 224(e); and that the Commission's justifications for its decision concerning the telecom rate were reasonable. In addition, the Commission's 2015 *Open Internet Order* discussed the concern raised in the Petition regarding consequences to the goals of the *2011 Pole Attachment Order* if the cost allocation rule were interpreted to apply fully only in instances where there are three and five attaching entities. With regard to any possible adverse effect on investment incentives from such an interpretation, the *Open Internet Order* stated that the Commission would be ''concerned by any potential undermining of the gains the Commission achieved by revising the pole attachment rates paid by telecommunications carriers'' in 2011 and accordingly would be ''monitoring marketplace developments . . . and can and will promptly take further action in that regard if warranted.'' Given the time that has elapsed since the filing and original comment cycle on the NCTA Petition, as well as the subsequent events discussed above, we seek to ensure that the record reflects current viewpoints on the issues raised in the NCTA Petition.

II. Procedural Matters

A. Accessible Formats

5. 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). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, *etc.*) by email: *FCC504@fcc.gov;* phone: (202) 418–0530 (voice), (202) 418–0432 (TTY).

B. Filing Requirements

6. *Ex Parte Rules.* This proceeding continues to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte*

presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

7. *Comment and Reply Comment.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the date 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://apps.fcc.gov/ecfs/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by firstclass 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 Street 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) or (202) 418–0432 (tty).

Federal Communications Commission.

Randy Clarke,

Division Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2015–11651 Filed 5–13–15; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 80, No. 93
Thursday, May 14, 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

Forest Service

Southwest Montana Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Montana Resource Advisory Committee (RAC) will meet in Dillon, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/main/bdnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held June 30, 2015 from 10 a.m. to 3 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Beaverhead-Deerlodge Forest Supervisor's Office, 420 Barrett Street, Dillon, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 420 Barrett Street, Dillon, Montana. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Patty Bates, RAC Coordinator by phone at (406) 683–3979 or via email at *pbates@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects for Title II funding:

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 25, 2015 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Patty Bates, RAC Coordinator, 420 Barrett Street, Dillon, MT 59749; or by email to *pbates@fs.fed.us,* or via facsimile to (406) 683–3844.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 7, 2015.

Melany L. Glossa,

Forest Supervisor.

[FR Doc. 2015–11629 Filed 5–13–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–31–2015]

Foreign-Trade Zone (FTZ) 44—Mount Olive, New Jersey; Notification of Proposed Production Activity; Robertet Inc. (Fragrance Compounds), Mt. Olive, New Jersey

Robertet Inc. (Robertet) submitted a notification of proposed production activity to the FTZ Board for its facility within Site 1 of FTZ 44. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 6, 2015.

The Robertet facility is used for the blending of fragrance ingredients into fragrance compounds for consumer goods such as perfumes, cosmetics, toiletries, soaps, and household products. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Robertet from customs duty payments on the foreign status components used in export production. On its domestic sales, Robertet would be able to choose the duty rates during customs entry procedures that apply to fragrance compounds (duty-free to 17 cents/kg + 1.9% duty rate) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: (duty rate ranges from duty-free to 6.5%)—castoreum absolute; castoreum absolute resin; castoreum resin; civette absolute without fats; tabac abs balkan type ta-1060; tabac extract w/o nicotine; tabac leaf absolute; tabac resin inc on tec; tobacco absolute w/o nicotine; tobacco colorless dijon; rose de stearoptenes; ocimene natural; caryophyllene; terpinolene 20; octanol natural; octanol-3 natural; hexanol natural; tetrahydro linalool; citronellol a/j; dextro linalool nat ex coriand; dihydro myrcenol; geraniol intermediate 60; geraniol pure (980)/bba; laevo linalool natural; linalol ex bois de rose; linalool synthetic; nerolidol nat (cabreuva actif); tetrahydro myrcenol; alcohol oleique; cis-3-hexenol natural; ethyl linalool; santalex t (sandela); bornylcyclohexanol iso/rp; cedrol natural crystals; polysantol; sandalore; sandela; terpineol alpha; terpineol prime; timberol; cinnamyl alcohol fcc; phenyl ethyl alcohol; thymol natural; thymol natural dno; geranyl ethyl ether 220404us; cedranfix 221056us; anethol badiane chine nat; dimethyl hydroquinone; diphenyl oxide; estragole natural; nerolin crystals; yara-yara; eugenol; eugenol natural;

citral diethyl acetal; corps jacinthe 220264us; cyclamen aldehyde ex 96%; aldehyde c12 lauric; aldehyde c-16; aldehyde c-8 (octyl aldehyde); bergamal toco; citral extra eoa; decanal 50% natural; hexanal (aldehyde c6) natural; trans-2-decenal natural; bourgeonal; citroxal 85 (muguet alde pure); cortex aldehyde 50 peomosa; cyclovertal; hexyl cinnamic aldehyde; lysmeral extra; myraldene; triplal; vanillin nf; ethyl vanillin; anisaldehyde natural; curgix pure; lyral; methyl nonyl ketone natural; menthone natural; beta ionone natural; methyl ionone gamma 70; methylionone gamma toco; beta damascenone natural; bucchu ketone natural; camphor usp; cashmeran; e super iso; iso e super clair; isophorone natural; nat replacer bucchu ketone 89%; natural product pulegone; ps 38; vertofix coeur; acetate vetyveryle haita extra; methyl napthyl ketone beta; raspberry ketone natural; musk ketone; acetic acid natural; ethyl acetate natural; n-butyl acetate natural; 1-octyl acetate natural; 3-octyl acetate natural; amyl acetate/iso; benzyl acetate fcc; benzyl acetate natural; bornyl acetate/iso; cassigreen r' touch; cedrenyl acetate; cis 3 hexenyl acetate natural; eugenol acetate; geranyl acetate natural; hexenyl acetate/cis 3; hexyl acetate; hexyl acetate natural; iso amyl acetate natural; isobutyl acetate natural; linalyl acetate natural; linalyl acetate synthetic; styrallyl acetate; terpinyl acetate extra; verdox; vertenex; cis-3-hexenyl propionate nat.; cycloprop; ethyl propionate natural; propionic acid natural; 2-methyl butyric acid natural; butyl 2-methyl butyrate; butyric acid natural; cis-3-hex-2-methyl buty nat; cis-3-hexenyl butyrate natural; cis-3-hexenyl iso valerate nat; dimethyl benzyl carbinyl butyr; ethyl 2-methyl butyrate nat.; ethyl butyrate natural; ethyl isobutyrate natural; ethyl isovalerate natural; ethyl-2-methyl butyrate; ethyl-2-methyl butyrate natural; geranyl butyrate natural; hexyl butyrate natural; isoamyl isobutyrate natural; isovaleric acid natural; octyl butyrate natural; phenoxy ethyl iso butyrate; phenyl ethyl iso butyrate; ethyl myristate natural; cis-3-hexenyl caproate natural; dimethylbenzyl carb acet; ethyl hexanoate natural; ethyl laurate; miglyol 812 (210019us); allyl cyclohexyl propionate; fruitate; benzyl benzoate usp; ethyl benzoate natural; methyl cinnamate natural; phenyl ethyl acetate; diethyl succinate; ethylene brassylate; diethyl phthalate; cis-3-hexenyl lactate natural; ethyl lactate natural; allyl amyl glycolate; amyl salicylate; amyl salicylate p (iso x)rp/g; benzyl salicylate; benzyl salicylate natural; hexenyl salicylate/cis 3; hexyl salicylate; methyl salicylate natural; hedione; dimethyl anthranilate natural; mandarol 230237; schiff base hydroxy citronnell; aldinyl; citronellyl nitrile; corps 1490; corps pamplemousse; dimethyl sulfide natural; furaneol(r) special natural; strawberry furanone; aldehyde c-14 (gamma undecal); aldehyde c-18; ambrettolide; coumarin; delta decalactone; delta dodecalactone; delta undecalactone; dihydro ambrettolide 230100us; gamma decalactone natural; gamma decalactone us natural; massoia lactone natural; ambroxan; calone 1951; eucalyptol; pyrazine complex natural; trimethyl pyrazines pure nat.; chlorophyll; clementine essential oil decolorized; oran florida 3con 3fois p&n; orange bitter oil; orange essence oil terpenes; orange essence sanguine; orange flower absolute; orange flower water absolute; orange leaf absolute; orange oil; orange oil dec fla 201013; orange oil distilled; lemon oil rect. stab.; lemon oil ss stabilized; lemon terpeneless; bergamot oil w/o furocoumarine; grapefruit oil; limagrume heart natural; limette oil stabilized; tangerine oil stabilized; menthe sechee absolute ma-1036; mint terpenes acetylated; peppermint oil; ambrarome absolute; ambrette extract liquid; ambrette seed abs colorless; ambrette seed colorless; ambrette seed oil; amyris essential oil; angelica root oil; angelica seed oil; arnica absolute; artemisia essential oil morocco; asafoetida oil; auriol; australian sandalwood; badiane ess oil (star anise); basil absolute; basil essential oil; beeswax absolute; beeswax absolute super; birch tar deph rectified; birch tar deph/rect ifra 44; birch tar rect. ifra 200143; bitter almond oil 065116; black currant buds absolute; black pepper oil; blue mallee essential oil; bran absolute butaflor; broom absolute; bucchu abs 321130; bucchu absolute; bucchu absolute 5000; bucchu essence; bucchu essential; cabreuva oil; cade ess rectified; cade oil rectified deph.; cajeput essential oil; camomille essential oil roman italy; cape snow bush essential oil; cardamom absolute; cardamone essential oil; caroube absolute; carrot seed terpeneless oil; cassia essential oil traditional, china; cassie absolute; castor oil; catnip essential oil; cedar 412 natural; cedarmoss absolute ifra 43; cedarwood 114 eo fractions; cedarwood atlas heart; cedarwood ess oil virginia; cedre altas he 020038us; celery absolute; cepes absolute ca-1081; chamomile ess. oil, roman fr; chamomile matricaira abs 5000; chamomille blue essential oil; chamomille ess. oil english; chamomille matricaire concrete; cinnamon leaf oil rectified; cire d'abeille absolute; cistambrol; ciste 300 colorless; clary sage absolute; clary sage oil; clove bud absolute; clove bud essential oil madagascar; clove essential oil; clove leaf eo 82% bleached id; clove leaf eo madagascar crude; clove leaf ess oil redistilled; clove leaf essential oil decolorized; coffee absolute; cognac green oil; cognac oil white; coriander oil stabilized; coriander terpl oil; coriandral natural stabilized; corn accord; cypress essential oil spain; cypress feuilles he 020332; cypress france expertise; cypress oil; cypriol essential oil india; cypriol heart essential oil rectified; davana oil; dynambre; elderflower absolute; elemi absolute; elemi absolute ea 220242; elemi coeur 200395; elemi heart natural stabilized; elemi oil extra; elemodor; eucalyptus absolute; eucalyptus bioabsolute; eucalyptus globulus 80%, china; eucalyptus radiata essential oil australia; fenugreek absolute; fenugreek absolute turkish; foin absolute; foin oil 200430 p&n; fucus resinoid; gaiac heart dm; galbanum absolute; galbanum essential oil; gayac wood alcohol; genieve essence 200488; gentian absolute; geranium absolute; geranium chinese ch 020072 us; geranium heart; geranium oil egypt; ginger absolute; ginger absolute butaflor; ginger absolute colorless dm; ginger extract; ginger oil; ginger oil 020779n; guaiacwood essential oil; guaiacwood essential oil paraguay; gurjum balsam oil, laos; gurjun balsam essential oil rectified; hay absolute; helichrysum absolute; helichrysum essence; herbor p31; ho leaf oil (shiu); honey absolute; hops oil; hydrocarbon resin sb; hyssop oil; hyssop oil 020830; iris buerre 3/1000; iris rde b 100% maroc 080002us; irone absolute; jasmin abs benzol 050084us; jasmin abs egyptian; jasmin absolute; jasmin absolute chassis; jasmin absolute sambac; jasmin floraline 73; jasmin grandiflorum absolute colorless; jasmin sambac colorless; jawa galanga oleoresin; juniperberry eo; juniperberry oil; juniperberry oil terpeneless; labdanum abs cistus sis; labdanum absolute; labdanum absolute epure; labdanum epure absolute; labdanum oil; labdanum resin giv; labdanum resinoid 5000 colorless; laminaria; laminaria absolute; laurel leaf oil; laurel leaves absolute; lavandin abrialis oil; lavandin absolute; lavandin absolute decolorized; lavandin concrete c; lavandin grosso eo, france; lavandin sumian 112002d; lavandin sumian ess. oil, fr; lavandin super ess. oil, fr; lavender absolute; lavender eo bulgaria low linalyl acetate; lavender essential oil, ukraine; lavender oil 50/52; lavender oil bulgarian; lavender oil

extra; lavender oil pure and natural; lemongrass ess. oil india; lemongrass oil guatemala; linden absolute; lisylang natural 345; litsea cubeba essential oil; lovage absolute 5000; lovage root ess oil; mace absolute; magnolia heart stabilized; marigold pure absolute; marjoram oil egypt; massoia bark oil; mate absolute 25% ethanol; melilot abs pur 050105us; melilot absolute; melissa essential oil; mimosa absolute; mimosa absolute india; myrrh essential oil; myrrh inc 100 abs. 050118us; myrrh resin; myrtle oil maroc 020285us; narcisse absolute; neroli essential oil morocco; neroli oil bigarade; neroli tunisie bigarde; nootka tree essential oil hp; nutmeg absolute; nutmeg essence oil terpeneless; nutmeg oil; nutmeg oil low safrol; oakmoss absolute; oakmoss absolute ifra 43; oakmoss dec absolute ifra 43a; olibanum absolute; olibanum dna; olibanum essential oil; olibanum essential oil, india; olibanum infusion; olibanum oil; olive fruit extract sr180; opoponax absolute; opoponax essential oil; opoponax oil; org rose water (hydro de rose); orris absolute; orris absolute butaflor; orris butter; orris concrete 15% irone p & n; orris concrete nat 8% irone; orris heart molecular distillation; orris resinoid; osmanthus absolute; osmanthus absolute p&n r22202; osmanthus gold abs 050066us; palmarosa essential oil; parsley herb oil; patchouli alpha guaiene rich fraction natural; patchouli coeur (heart); patchouli heart; patchouli oil light; patchouly absolute r21240; patchouly rectified oil; pepper colorless; peru balsam absolute; peru balsam oil; petitgrain heart essential oil; petitgrain lemon oil; petitgrain oil; petitgrain oil d.e.; petitgrain oil paraguay; pimento berry oil; pimento berry oil low meth eug; pine absolute; pine absolute decolorized; pine needle absolute pa-1041; poplar buds absolute; poplar buds colorless dm; rosalina essential oil; rose abs decolorized pure& nat; rose abs turque decolor r22211; rose absolute purifee; rose absolute semi decolorized; rose absolute turk p&n; rose essential oil, turkey; rose oil turk me <500ppm; rose turk absolute p&n; rose turk ess oil p&n; rose turkish absolute; rose turque bioabsolute; rosemary absolute; rosemary ess. oil, tunisia; rosemary extract ra 30 natural; rosemary nat antioxidant 20; rosemary oil stabilized; sage clary essential oil; sage eo spain; sage oil; sandalwood ess oil australian; sandalwood essence new caledonia; sandalwood essential oil new caledonia; sandalwood new caledonia md; sandalwood oil; sandalwood oil australian; sandalwood selection 8; santalol; seaweed pacific; seaweed resin; shinus molle; shinus molle oil; shinus molle, essence; shiso essential oil; shiso oil; sichuan pepper co2 abs; spike lavender oil spanish; star anise oil rectified; styrax absolute; styrax absolute low styrene honduras; styrax oil; styrax purified; styrax resin natural rifm; sunflower essential oil; tabac blond 100 abs burley; tagete afs 020178us; tagette absolute; tagette essence; tagette oil; tarragon absolute; tarragon oil (estragon); tea tree ess. oil australia; tea tree essential oil chinese; tea tree essential oil cinrich australia; tea tree essential oil high cineol; tea tree essential oil, australia certified organic; tea tree essential oil, south africa; thyme absolute 5000; thyme eo spain white redistilled; treemoss abs dec ifra 43a; treemoss abs ifra 43/miglyol; treemoss inc ifra 43; tuberose absolute; tuberose absolute cream; valeriane, essence; vanilla absolute; vanilla co2 extract on tec; vanilla colorless; vanilla extract concentrate; vanilla resin colorless; vanilla surabsolute colorless; verbena absoluite; vetiver acetate; vetiver ess. oil java; vetiver haiti dm; vetiver haiti he 020185; vetiver oil java 021890; vetiveryl acetate extra; vetyver coeur natural; vetyveryl acetate; violet leaf absolute; wheat absolute; wild red thyme essence rect.; wood 49 essential oil; ylang complete essential oil low mpc; ylang complete nosy be ess oil; ylang eo extra comoros p & n; ylang essence extra; ylang flower; ylang i nosy be essential oil; ylang iii comoros p & n; ylang iii essential oil; ylang iii nosy be ess. oil; ylang ylang; ylang ylang iii oil; arnica resinoid colorless; asa foetida absolute; benzoin siam resin; clove buds absolute; elemi resin; fir balsam abs resin; labdanum a resin; labdanum resin colorless; lentisque absolute; mushroom res(champignon)mr1050; opoponax resin; peru balsam resinoid; saffron resinoid; tolu balsam res nat ta-1040; tonka bean resinoid; tonka feves absolute; gurjun essential oil; benzoin siam lot 2 resin; benzoin sumatra resin; black currant buds abs subst.; boronia absolute type; boronia type absolute; bucchu essential oil type; bucchu ketone @1% castor oil; cacao clear liposoluble extract; cassie absolute type; castoreum resin; chamomille rom hydrodispersibl; clementine natural; cocoa absolute; cocoa absolute on pg; cocoa clear lipsoluble; cocoa colorless reinforced; cocoa extract; cocoa extract (88% pg); cocoa extract natural 80.5760; cocoa extract on pg; cocoa extract on pg 80.5742; cocoa extract reinforced; cocoa extract rs6; cocoa extract uop 11197; coffee colorless dm; cucumber abs on mygliol; cucumber alcoholate wonf 78%; cucumber extract; cucumber natural on crodamol; elemi type oil; eucalyptus forte colorless dm; fenugrec absolute; fenugreek colorless; fenugreek infusion; fir balsam substitute; gentiane nat ext 25% vol805912; ginger nhs; green key e3; green key t5; hazelnut infusion natural wonf; herbor o25; jambu oleo 30% spil/ethanol; jambu oleo 30% spil/pg; jambu oleo 30% spil/triacetine; jambu oleo 30%spil/triethyl ci; jambu oleo c'less 15% spil/mig; jambu oleo cless 15% spil/tec; labdanum claire dep free; labdanum cless on triacetine; lavandin absolute type natural; lavender fleurs; liquorice specialty (carensac); mate absolute; mate absolute on pg; mate absolute w/o pg; mate colorless absolute; mate nhs; mimosa flowers olessence; mint nat hydrodispersible; mint natural flavor wonf 88.2766; mushroom concentrate; myrrhanol t; myrtle nat hydrodispersible; nat allyl caproate 25%; natural cocoa flavor wonf 38%; natural nut flavor type 80.7768; natural tuberose flavoring with other natural flavorings; neroli n ess; neroli oil; nutmeg nhs; olibanol c; olibanum oil dm colorless; orange flower absolute; orange flower absolute type; orange flower hydrodispersible; orange olessence; orris butter 15% irone; orris butter italian; orris concrete type 8% irone; orris concrete 15% irone; orris concrete 8% irone; orris liquid; orris type concrete florentine; peach natural; peach natural w/o acetaldehyde; peach odoressence w/o acetalde; peppermint absolute; peru balsam colorless; pineapple natural; raspberry fortifier nat 816061; rhodinol subs sp; rose absolute type maroc; rose de mai absolute; rose essence petals; rose petals natural; rose petals turk oilnat me<500; rose type oil; rosemary nat hydrodispersible; rosewood oil subst natural; saffron colorless; sage officinalis nat hydro.; strawberry heart; strawberry nat w/o acetaldehyd; styrax absolute colorless; succan (rum) absolute; succan (rum) absolute type; tea absolute; tea black c'less on tec; tea colorless on pg; thyme absolute 10% pg; thyme oil red te-1020; tocopherols d-mixed 50% e306; tolu balsam; tolu balsam res type ifra; tolu balsam resin 5000 t5–1020; tolu balsam resin type; undecatriene at 5% tria; vanilla absolute colorless; violet leaf absolute colorless; whiskey extract nat wonf; whiskey nat extract 80.5512; ylang petal natural; actiscent rose cardinale #g11413375; alcool cinnamifur reconstitute; aldehyde icl b 220126us; algenone p.b.; aloe; amber incense; animalis 1745–3; anthrarose; apple natural w/o acetaldehyde; apricot absolute natural; apricot fragrance; apricot nat 4938/7 w/o acetald; apricot

nat w/o acetald.grasse; apricot nat w/o acetaldehyde; apricot natural; aquarama/7—no formula; armoise; armoise ex 253591us; aromatic cucumber; base pomme 44%vstat p&n 838358; base schiff helional 50% dpg; basil spec w/o methyl chavicol; berg deterp n/coco base 191; bergamot; bergamot 115 000115us; bergamot 677 250136us; bergamot oil type; bergamot reconstituted; bergamot subs sp; bergamote 153 000153us; black tea colorless natural; blackcurrant bud composition; blanc gardenia/4—no formula; body creator 2 k/64708—no fo; bois des landes (pine wood); broom absolute type; cacao clair 254117us; cajeput oil substitute; cascarilla substitute oil; cassis 02087/d 475612us; cassis 1–706 250172us; cassis 731 (000731us); cassis bourgeons abs pure; cassis feuilles 101(000101us); cassis p 101199 french version; castoreum reco syn 09 254658us; cedar hyper conc 50% dpg; cedrat (citron tree) heart nat; chloe g10636399—no formula; cinnamon bark oliffac (b) 230520; citrix 130 000130us; citrus & sage/plug in frag; clementine 5829/3; cocoa dpg; concombre hesperide; concombre nat; concombre ss salicylate exad7903 l'oreal 0067t470; corp geranium nt 812; corps prepare 230085us; costus oliffac; cucumber; cucumber chamomile 5986; cucumber nat; cucumber nat grasse version; cucumber rose; cypress type oil; damasflor 615b 250180us; deo natural; dewfruit 040201; eau de chloe g110 27210—no f; ecocert lavande p10822—no fo; eucalyptus mint lavender 6146; fairy dance g11012679—no fo; fauvalone sp w/o nitro musks; fig specialty ifra; figuene; fir balsam colorless subst.; fir balsam subst abs nat kosh; fir balsam substitute abs nat; fir bud type; fleur de carotte frag/french; flo jasmin 62–812h 251177us; flo jasmin benzol 79–818; flo narcisse 9–800 250011us; flo neroli 74825 250053us; flo rose 61–813b 251013us; flo rosessence80–819b 251014us; flo tuberose 55–842 250075us; flo.ylang 110104us; fragrance; fragrance p10729—no formula; fragrance p10784—no formula; fraise arome (french version); fraise poivree p11044—no for; framboise d'ete p110122—no f; fruity base; galaxolide dpg 50 070076; galaxolide ipm 50; galbanodor; galbanum colorless; galbanum savoy sub 480223us; galbanum synth r (s/a 2374); galbanum synthy ess 131; galbanum top 18326 saf; gardenia odoressence; geranium absolute ni; ginger sushi 4566; grapefruit nat; grapefruit nat (grasse); hay abs.b.a. colorless p&n; helichrysum flavor; jasmarol 000120us; jasmin 132–121 000121us; jasmin absolute ifra sp; jasmin m; jasmin petal natural; jonquil hyaciinth absolute type; jonquil hyacinth type wo dep; juniperberry oil type; karine g 9743268; karo karounde abs subs natural; karo karounde sub natural; karo karounde subst w/o champ; karolina scent strip oil g108-; kukui nut; labdanum absolute 50% dpg; labdanum claire; labdanum colorless; labdanum colorless dep free; labdanum resin 20% dpg; labdanum resin pays; labdanum resinoid; lait; lavender oil 50/52 030081us; lavender oil for aromatic note; lemon oil; lentisque type resinoid; liatrix subst abs dec ni; l'oreal p107637—no formula; l'oreal sr176—no formula; loriana g-10029374 grasse; loriana g10323250—no formula; loriana mod g10029374—no for; loriana mod g10323250—no for; lt.hair frag; mandarinix 246 000246us; mate abs 40% citroflex a2; mate absolute dec 40%citroflex; mate absolute decolore; mate absolute green 10% dpg; mate dec special abs. 220896; mate tobacco 253414us; mauve guimauve; miel des pyrenes p 991198; mimosa abs cp sape chv 1423; mimosa flo 56/827h 254365us; mimosa type absolute; mousse d'arbre absolute; muscine type resinoid; musk sv; my hair frag; narcisse floaline 79/800 b; narcisse sans pe 00426/1; natural peche 673609; neroli oil ex chr; neroli water stabilized flavor; oakmoss 50% citroflex ifra 43; oakmoss abs ifra 43; oakmoss absolute ifra 43 colorless; ocean breeze/plug in frag; olibanol; olibanol lot ii; olibanum absolute on dpg; olibanum resin claire; olibanum wood natural; olivade without dep; olive natural g108 8988; opoponax wood natural; orange mint 5979; orchidee thai ghg 674(116100); orchidee vanille p110108—no; oriental spice(g996385); orris 243 resin; orris liquid; osmanthus abs substitute; osmanthus odoresence(hs); osmanthus type absolute 7600; p100441—no formula—for rec; p107624 l'oreal—no formula; passion ginger p110113—no fo; pasteque/french version; patchouli sub ess oil 934184; patchouly subs essential oil; patchouly substitute; pear natural; peche 657 ifra 44; peche; peche natural 3845/1—no form; petale de camelia (grasse); petitgrain citronnier; pin bt resin; pineapple nectar; pomme oliffac depr 0407b; premix 2c base; prunella 118 000118us; raspberry; raspberry natural; reseda absolute; revitaleaf cs (grasse); rose conc abs t23/45 116089us; rose concentree de'leau; rose ecoconcentrate; rose flavor w/o paraben; rose oil low m.e. content; rose patchouly (french oil); rose violette p110105—no for; rose wt 19s 000195us; rum extract on crodamol; santal s pcf free; santal sb; seaweed nhs; sensa; sleeptime; stay asleep; strawberry; strawberry natural two; strawberry w/o dep; styrax low styrene; styrax type resin; styrolene; synanitrile; tagette absolute type; tangenil 06265b 230304us; tangerine 00372/td 471596us; tetrahydro mugol; the bryant park; the matcha i p001062; tobacco abs type w/o nicotine; toliris; tolu inc type abs. 050150us; tolu type abs. 050149us; tomato natural; tonka feves; tonka feves resin 50% dep; tonka infusion; tonkarome rifm; treemoss abs a 50% citroflex; treemoss abs type ifra 43; treemoss absolute type 43a; treemoss conc ifra 43; treemoss ifra 43a; treemoss ifra abs ti-1110 dno; treemoss inc ifra 43a; treemoss resinoid ifra 43; treemoss type absolute ifra 43; treemoss type conc ifra 43; tubereuse 55 ss pe floraline; tuberose 258b 000508us; tuberose 32 ussp; tuberose enfl type abs lot ii; tuberose floraline 99; tulipe floraline 040588; vahine 9645/14 (french oil); vanila; vanilla 90% volume infusion; vanilla infusion; vanille 704 250170us; vanille 75% v infusion—no fo; vanille arome 050266us; vanille surfina ex sol abs.; vergel base; west side candle oil (grasse); wormwood oil type; ylang iii extender; ylang type essence; young skin 3 fragrance; yuzu reco t 20/87 110107us; elisa coeur g103 15460; elfapur lm75s lavreth 221453us; and, ethomeen c25 220040us.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 23, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: May 7, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–11578 Filed 5–13–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Open Meeting.

SUMMARY: The President's Export Council (Council) will hold a meeting to deliberate on recommendations related to promoting the expansion of U.S. exports. Topics may include: North American supply chain competitiveness; innovation; Open Skies agreements; regulatory cooperation; infrastructure; and promoting sustainable building practices and products in developing countries. The final agenda will be posted at least one week in advance of the meeting on the President's Export Council Web site at *http://trade.gov/pec.*

DATES: June 10, 2015 at 9:30 a.m. (ET)

ADDRESSES: The President's Export Council meeting will be broadcast via live webcast on the Internet at *http://whitehouse.gov/live.*

FOR FURTHER INFORMATION CONTACT: Tricia Van Orden, Executive Secretary, President's Export Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–5876, email: *tricia.vanorden@trade.gov.* Press inquiries should be directed to the International Trade Administration's Office of Public Affairs, telephone: 202–482–3809.

SUPPLEMENTARY INFORMATION:

Background: The President's Export Council was first established by Executive Order on December 20, 1973 to advise the President on matters relating to U.S. export trade and to report to the President on its activities and recommendations for expanding U.S. exports. The President's Export Council was renewed most recently by Executive Order 13652 of September 30, 2013, for the two-year period ending September 30, 2015. This Committee is established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

Public Submissions: The public is invited to submit written statements to the President's Export Council. Statements must be received by C.O.B. June 5, 2015 by either of the following methods:

a. Electronic Submissions

Submit statements electronically to Tricia Van Orden, Executive Secretary, President's Export Council via email: *tricia.vanorden@trade.gov.*

b. Paper Submissions

Send paper statements to Tricia Van Orden, Executive Secretary, President's Export Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230.

Statements will be posted on the President's Export Council Web site (*http://trade.gov/pec*) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Meeting minutes: Copies of the Council's meeting minutes will be available within ninety (90) days of the meeting.

Dated: May 7, 2015.

Tricia Van Orden,

Executive Secretary, President's Export Council.

[FR Doc. 2015–11670 Filed 5–13–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On January 8, 2015, the Department of Commerce (the ''Department'') published in the **Federal Register** the preliminary results of the 2013–2014 administrative review of the antidumping duty order on non-malleable cast iron pipe fittings (''NMPF'') from the People's Republic of China (''PRC''), in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act'').[1] The period of review (''POR'') is April 1, 2013, through March 31, 2014. This review covers one PRC company, Overseas Industrial Corporation (''OIC'').[2] The Department preliminarily found that OIC is part of the PRC-wide entity. The Department invited interested parties to comment on the *Preliminary Results.* No parties commented. Accordingly, our *Preliminary Results* remain unchanged in these final results of review and are adopted as the final results of the review.

DATES: *Effective Date:* May 14, 2015.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan and Robert Bolling, AD/CVD Operations, Office 4, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4081 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2015, the Department published the *Preliminary Results* in the **Federal Register**. We invited interested parties to submit comments on the *Preliminary Results,* but no comments were received.

Scope of the Order

The products covered by the order are finished and unfinished NMPF with an inside diameter ranging from 1/4 inch to 6 inches, whether threaded or unthreaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as ''cast iron pipe fittings'' or ''gray iron pipe fittings.'' These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings. Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of the order. These ductile fittings do not include grooved fittings or grooved couplings.

[1] *See Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2013–2014,* 80 FR 1025 (January 8, 2015) (''*Preliminary Results*'').

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 30809 (May 29, 2014).

Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to the American Water Works Association (''AWWA'') specifications AWWA C110 or AWWA C153 are not included.

Imports of subject merchandise are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60, 7307.19.30.85, 7326.90.8588. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.[3]

Period of Review

The period of review is April 1, 2013, through March 31, 2014.

Final Results of Review

As noted the *Preliminary Results,* OIC has not demonstrated its eligibility for a separate rate. Thus, for these final results, the Department continues to find that OIC is part of the PRC-wide entity and therefore, subject to the rate previously established for the PRC-wide entity (*i.e.,* 75.50 percent).

Assessment

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[4] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. The Department intends to instruct CBP to liquidate entries of subject merchandise from OIC at the PRC-wide rate of 75.50 percent.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters which are not under review in this segment of the proceeding but which have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including OIC, the cash deposit rate will be the PRC-wide rate of 75.50 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 7, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–11655 Filed 5–13–15; 8:45 am]

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[3] On April 21, 2009, in consultation with CBP, the Department added the following HTSUS classification to the AD/CVD module for pipe fittings: 7326.90.8588. *See* Memorandum from Abdelali Elouaradia, Office Director, Import Administration, Office 4 to Stephen Claeys, Deputy Assistant Secretary, Import Administration regarding the Final Scope Ruling on Black Cast Iron Cast, Green Ductile Flange and Twin Tee, antidumping duty order on non-malleable iron cast pipe fittings from China, dated September 19, 2008; *see also* Memorandum to the file from Karine Gziryan, Financial Analyst, Office 4, regarding Module Update adding Harmonized Tariff Schedule Number for twin tin fitting included in the scope of antidumping order on non-malleable iron cast pipe fittings from China, dated April 22, 2009.

[4] *See* 19 CFR 351.212(b)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013

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

SUMMARY: On January 7, 2015, the Department of Commerce (''Department'') published the preliminary results of the twelfth administrative review, covering the period December 1, 2012, through November 30, 2013, of the antidumping duty order on honey from the People's Republic of China (''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* After analyzing interested parties' comments, we made no changes for the final results of review. The final antidumping duty margins for this review are listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* May 14, 2015.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office V, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2015, the Department published the *Preliminary Results* of this administrative review and invited interested parties to submit comments on our findings. On February 5, 2015, the mandatory respondent, Kunshan Xinlong Food Co., Ltd. (''Kunshan Xinlong''), filed a case brief.[2] On February 13, 2015, Petitioners [3] filed a rebuttal brief. The Department did not hold a public hearing pursuant to 19 CFR 351.310(d), as interested parties did not request one. We conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the ''Act'').

[1] *See Honey From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 862 (January 7, 2015) (''*Preliminary Results*'').

[2] We note that the case brief was timely filed on February 5, 2015, despite the erroneous date noted on the cover letter of the case brief.

[3] Petitioners are: American Honey Producers Association and Sioux Honey Association.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties to this review are addressed in the ''Administrative Review of Honey from the People's Republic of China: Issues and Decision Memorandum for the Final Results'' (''Decision Memorandum''), dated concurrently with and hereby adopted by, this notice. A list of the issues which parties raised and to which we respond in the Decision Memorandum is attached to this notice as an Appendix. The Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building. In addition, parties can obtain a complete version of the Decision Memorandum on the Internet at *http://trade.gov/enforcement/frn/index.html.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey.[4] The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.[5]

PRC-Wide Entity

In the *Preliminary Results,* the Department indicated its intention to make a determination at the final results with respect to two companies for which the review was timely withdrawn: Fuzhou Shenglinmark Trade Co., Ltd., and Dongtai Peak Honey Industry Co., Ltd.[6] In the *Preliminary Results,* we stated that ''because Fuzhou Shenglinmark Trade Co., Ltd. and Dongtai Peak were not eligible for separate-rate status at the initiation of the review, the Department's practice is to refrain from rescinding the review with respect to these two companies at this time . . . '' because ''while the request for review of these companies was timely withdrawn, we preliminarily determine that the companies remain part of the PRC-wide entity, which is under review for these preliminary results.'' [7] We further stated that we ''will make a determination with respect to the PRC-wide entity at the conclusion of this review.'' [8] Because there are no changes to the facts regarding these two companies since the *Preliminary Results,* we continue to find that Fuzhou Shenglinmark Trade Co., Ltd., and Dongtai Peak Honey Industry Co., Ltd. are part of the PRC-wide entity, which is under review.

As discussed in the *Preliminary Results,* the Department relied on facts available in making its preliminary determination with respect to Kunshan Xinlong, and treated it as part of the PRC-wide entity. We preliminarily drew an adverse inference in selecting from among the facts otherwise available. Because Kunshan Xinlong, as part of the PRC-wide entity, withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding, we continue to find that the PRC-wide entity failed to cooperate to the best of its ability and, accordingly, find it appropriate to assign it a margin based on adverse facts available (''AFA''). The Department's determination is in accordance with sections 776(a)(2)(A), (B), (C) and 776(b) of the Act.[9] For a detailed discussion regarding Kunshan Xinlong, *see* Decision Memorandum.

Final Results of Review

As a result of this administrative review, the weighted-average dumping margin for the POR is as follows:

Manufacturer/exporter	Margin (dollars per kilogram)
PRC-wide entity [10]	2.63

Assessment

Consistent with these final results, and pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), the Department will direct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Consistent with *AR5 Final Results,* we will direct CBP to assess importer-specific assessments rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the review period.[11] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the PRC-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash

[4] *See* Decision Memorandum for a complete description of the Scope of the Order.

[5] *See Notice of Antidumping Duty Order And Amendment To Final Determination: Honey from the People's Republic of China,* 66 FR 59026 (December 10, 2001).

[6] *See Preliminary Results,* 80 FR at 862 and accompanying Preliminary Decision Memorandum at pages 1–2 and 3–4. *See also* Letter from Petitioners re: ''Partial Withdrawal of Request for 12th Administrative Review,'' dated February 28, 2014.

[7] *See Preliminary Results,* 80 FR at 862 and accompanying Preliminary Decision Memorandum at pages 3–4.

[8] *Id.*

[9] *See, e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1. *See also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review,* 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity) unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007).

[10] The PRC-wide entity includes: Kunshan Xinlong Food Co., Ltd., Fuzhou Shenglinmark Trade Co., Ltd., and Dongtai Peak Honey Industry Co., Ltd.

[11] *See Honey from the People's Republic of China: Final Results and Rescission, In Part, of Aligned Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 424321 (July 21, 2008) (''*AR5 Final Results*'').

deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate $2.63 per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

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

Administrative Protective Order

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.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 7, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Decision Memorandum

I. Summary
II. Background
1. Scope of the Order
2. Case Timeline
III. Discussion of the Issues
Comment 1: Whether the Department's Rejection of Kunshan Xinlong's Post-Deadline Extension Requests Was Appropriate
Comment 2: Whether the Department Properly Disallowed Kunshan Xinlong to Submit a Supplemental Section C Questionnaire Response
Comment 3: Whether the Adverse Inference Is Appropriate
Comment 4: Whether the AFA Rate Is Appropriate
IV. Recommendation

[FR Doc. 2015–11577 Filed 5–13–15; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–025, C–533–862, C–523–811]

Certain Polyethylene Terephthalate Resin From the People's Republic of China, India and the Sultanate of Oman: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

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

FOR FURTHER INFORMATION CONTACT: David Cordell (India) at (202) 482–0408, Ilissa Shefferman (People's Republic of China) at (202) 482–4684, and Thomas Martin (Sultanate of Oman) at (202) 482–3935, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2015, the Department of Commerce (the Department) initiated countervailing duty investigations on certain polyethylene terephthalate resin from the People's Republic of China (PRC), India, and the Sultanate of Oman (Oman).[1] Currently, the preliminary determinations are due no later than June 3, 2015.

Postponement of the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for an extension in accordance with 19 CFR 351.205(e), section 703(c)(1)(A) of the Act allows the Department to postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation.

On May 4, 2015, the petitioners[2] submitted a timely request pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determinations.[3] Therefore, in accordance with section 703(c)(1)(A) of the Act, we are fully extending the due date for the preliminary determination to not later than 130 days after the day on which the investigation was initiated. As a result, the deadline for completion of the preliminary determination is now August 7, 2015.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 7, 2015.

Ronald K Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

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[1] *See Certain Polyethylene Terephthalate Resin from the People's Republic of China, India, and the Sultanate of Oman: Initiation of Countervailing Duty Investigations,* 80 FR 18376 (April 6, 2015).

[2] DAK Americas, LLC, M&G Chemicals, and Nan Ya Plastics Corporation, America, (the petitioners).

[3] *See* Letters from Petitioners, entitled ''Polyethylene Terephthalate Resin From the People's Republic of China, India and Sultanate of Oman: Petitioners' Request for Extension of the Preliminary Determination,'' dated May 4, 2015.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD773

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Atlantic Ocean Offshore New Jersey, June to August, 2015

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) implementing regulations, we hereby give notice that we have issued an Incidental Harassment Authorization (Authorization) to Lamont-Doherty Earth Observatory (Lamont-Doherty), a component of Columbia University, in collaboration with the National Science Foundation (NSF), to take marine mammals, by harassment, incidental to conducting a marine geophysical (seismic) survey in the northwest Atlantic Ocean off the New Jersey coast June through August, 2015.

DATES: Effective June 1, 2015, through August 31, 2015.

ADDRESSES: A copy of the final Authorization and application are available by writing to Jolie Harrison, Chief, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contacts listed here, or by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

The NSF prepared an amended Environmental Assessment (EA) in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and the regulations published by the Council on Environmental Quality. Their EA titled, ''Final Amended Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Atlantic Ocean off New Jersey, Summer 2015,'' prepared by LGL, Ltd. environmental research associates, on behalf of the NSF and the Lamont-Doherty, is available at *https://www.nsf.gov/geo/oce/envcomp/index.jsp.*

NMFS also prepared an EA titled, ''Proposed Issuance of an Incidental Harassment Authorization to Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Northwest Atlantic Ocean, June–August, 2015,'' in accordance with NEPA and NOAA Administrative Order 216–6. To obtain an electronic copy of these documents, write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or download the files at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

NMFS also issued a Biological Opinion under section 7 of the Endangered Species Act (ESA) to evaluate the effects of the survey and Authorization on marine species listed as threatened and endangered. The Biological Opinion is available online at: *http://www.nmfs.noaa.gov/pr/consultations/opinions.htm.*

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization shall be granted for the incidental taking of small numbers of marine mammals if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The Authorization must also set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat (*i.e.,* mitigation); and requirements pertaining to the monitoring and reporting of such taking. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 23, 2014, NMFS received an application from Lamont-Doherty requesting that NMFS issue an Authorization for the take of marine mammals, incidental to the State University of New Jersey at Rutgers (Rutgers) conducting a seismic survey in the northwest Atlantic Ocean June through August, 2015. NMFS determined the application complete and adequate on February 20, 2015, and published a notice of proposed Authorization on March 17, 2015 (80 FR 13961). The notice afforded the public a 30-day comment period on the proposed MMPA Authorization.

Lamont-Doherty proposes to conduct a high-energy, 3-dimensional (3–D) seismic survey on the R/V *Marcus G. Langseth* (*Langseth*) in the northwest Atlantic Ocean approximately 25 to 85 kilometers (km) (15.5 to 52.8 miles [mi]) off the New Jersey coast for approximately 30 days from June 1 to August 31, 2015. The following specific aspect of the proposed activity has the potential to take marine mammals: Increased underwater sound generated during the operation of the seismic airgun arrays. We anticipate that take, by Level B harassment only, of 32 species of marine mammals could result from the specified activity.

Description of the Specified Activity

Overview

Lamont-Doherty plans to use one source vessel, the *Langseth,* two pairs of subarrays configured with four airguns as the energy source, and four hydrophone streamers, and a P-Cable system to conduct the conventional seismic survey. In addition to the operations of the airguns, Lamont-Doherty intends to operate a multibeam echosounder and a sub-bottom profiler on the *Langseth* continuously throughout the proposed survey which would run 24 hours a day. However, they would not operate the multibeam echosounder or sub-bottom profiler during transits to and from the survey area.

The purpose of the survey is to collect and analyze data on the arrangement of sediments deposited during times of changing global sea level from roughly 60 million years ago to present. The 3–D survey would investigate features such as river valleys cut into coastal plain sediments now buried under a kilometer of younger sediment and flooded by today's ocean. Lamont-Doherty's proposed seismic survey is purely scientific in nature and not related to oil and natural gas exploration on the outer continental shelf of the Atlantic Ocean. The proposed survey's principal investigator is Dr. G. Mountain (Rutgers) and the collaborating investigators are Drs. J. Austin and C. Fulthorpe, and M. Nedimovic (University of Texas at Austin).

Lamont-Doherty, Rutgers, and the NSF originally proposed conducting the survey in 2014. After completing appropriate environmental analyses under appropriate federal statutes, NMFS issued an Authorization under the MMPA and a Biological Opinion with an Incidental Take Statement (ITS) under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) to Lamont-Doherty on July 1, 2014 effective from July 1 through August 17, 2014. Lamont-Doherty commenced the seismic survey on July 1, 2014, but was unable to

complete the survey due to the *Langseth* experiencing mechanical issues during the effective periods set forth in the 2014 Authorization and the ITS. Thus, Lamont-Doherty has requested a new Authorization under the MMPA and the NSF consulted with NMFS for a new Biological Opinion under the ESA to conduct this re-scheduled survey in 2015. The project's objectives remain the same as those described for the 2014 survey (see 79 FR 14779, March 17, 2014 and 79 FR 38496, July 08, 2014, and 80 FR 13961, March 17, 2015).

Dates and Duration

Lamont-Doherty proposes to conduct the seismic survey for approximately 30 days. The proposed study (*e.g.,* equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) would include approximately 720 hours of airgun operations (*i.e.,* 30 days over 24 hours). Some minor deviation from Lamont-Doherty's requested dates of June through August, 2015, is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Thus, this Authorization will be effective from June 1 through August 31, 2015.

Specified Geographic Area

Lamont-Doherty proposes to conduct the seismic survey in the Atlantic Ocean, approximately 25 to 85 km (15.5 to 52.8 mi) off the coast of New Jersey between approximately 39.3–39.7° N. and approximately 73.2–73.8° W. Water depths in the survey area are approximately 30 to 75 m (98.4 to 246 feet [ft]). They would conduct the proposed survey outside of New Jersey state waters and within the U.S. Exclusive Economic Zone.

Detailed Description of the Specified Activities

Transit Activities

The *Langseth* will depart from New York, NY, and transit for approximately eight hours to the proposed survey area. Setup, deployment, and streamer ballasting would occur over approximately three days. At the conclusion of the 30-day survey (plus additional days for gear deployment and retrieval), the *Langseth* will return to New York, NY.

Vessel Specifications

NMFS outlined the vessel's specifications in the notice of proposed Authorization (80 FR 13961, March 17, 2015). NMFS does not repeat the information here as the vessel's specifications have not changed between the notice of proposed Authorization and this notice of an issued Authorization.

Data Acquisition Activities

NMFS outlined the details regarding Lamont-Doherty's data acquisition activities using the airguns, multibeam echosounder, and the sub-bottom profiler in the notice of proposed Authorization (80 FR 13961, March 17, 2015). NMFS does not repeat the information here as the data acquisition activities have not changed between the notice of proposed Authorization and this notice of an issued Authorization.

For a more detailed description of the authorized action, including vessel and acoustic source specifications, metrics, characteristics of airgun pulses, predicted sound levels of airguns, etc., please see the notice of proposed Authorization (80 FR 13961, March 17, 2015) and associated documents referenced above this section.

Comments and Responses

NMFS published a notice of receipt of Lamont-Doherty's application and proposed Authorization in the **Federal Register** on March 17, 2015 (80 FR 13961). During the 30-day public comment period, NMFS received comments from the following: 26 private citizens, Senators Cory A. Booker and Robert Menendez, Representatives Tom MacArthur and Frank Pallone, the Marine Mammal Commission (Commission), and the following organizations: Clean Ocean Action; the Marcus Langseth Science Oversight Committee (MLSOC); the State of New Jersey Department of Environmental Protection (NJDEP); the Sierra Club—Ocean County Group (Sierra Club); the New Jersey Marine Fisheries Council; SandyHook SeaLife Foundation; and NY4 Whales. NMFS has posted the comments online at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm#nj2015.*

NMFS addresses any comments specific to Lamont-Doherty's application related to the statutory and regulatory requirements or findings that NMFS must make in order to issue an Authorization. Following is a summary of the public comments and NMFS' responses.

Requests To Extend the Public Comment Period

Comment 1: Prior to the conclusion of the public comment period for the notice of proposed Authorization (80 FR 13961, March 17, 2015), NMFS received requests through the public comment process from Senators Cory A. Booker and Robert Menendez, and Representatives Tom MacArthur and Frank Pallone, Clean Ocean Action, and one private citizen for NMFS to extend the 30-day public comment period by an additional 60 days for constituent review and comment.

Response: NMFS acknowledges the requests from the public and members of the New Jersey Congressional delegation for an extension of the public comment period. However, NMFS did not extend the public comment period for the **Federal Register** notice of proposed Authorization which closed on April 16, 2015 based on the following factors.

1. The NSF, sponsor of the research seismic survey, released a draft amended EA, titled, ''*Draft Amended Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Atlantic Ocean off New Jersey, Summer 2015,''* on the proposed seismic survey on December 19, 2014 with a 37-day public comment period. The NSF's draft amended EA tiers to a 2014 NSF Final EA for the same project and to the Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (PEIS) for Marine Seismic Research Funded by the National Science Foundation or Conducted by the U.S. Geological Survey (NSF, 2011). It contains a description of the action, addresses potential impacts to tourism and commercial and recreational fisheries, and discusses mitigation measures for marine mammals.

In response to requests from the public and from members of the New Jersey Congressional delegation, the NSF extended their public comment period for the draft amended EA by an additional 15 days providing a total of 52 days for adequate review by the public.

2. NMFS published a **Federal Register** notice of the proposed Authorization for the 2015 survey on March 17, 2015 with a 30-day public comment period. Also, on March 17, 2015, NMFS informed Clean Ocean Action of the availability of the application and **Federal Register** notice for review and comment.

We note that the 2015 seismic survey is substantively the same as the one analyzed and authorized in 2014 (see 79 FR 14779, March 17, 2014 and 79 FR 38496, July 08, 2014), except that Lamont-Doherty proposes to use a 50-percent smaller airgun array, which equates to fewer anticipated effects on marine mammals. Thus, the 2015 proposed survey (again, substantively the same as the 2014 survey) has been in the public domain for minimally one year (March 17, 2014 through April 17, 2015). In fact, NMFS extended the

public comment period for the 2014 notice of the proposed Authorization by an additional 30 days (see 79 FR 19580, April 9, 2014) to accommodate additional review and analyses by the same if not similar interested parties.

3. For the 2015 survey, NMFS provided the public 30 days to review and comment on our preliminary determinations, in accordance with section 101(a)(5)(D) of the MMPA. NMFS believes that the two public comment periods (*i.e.,* one for NSF's draft amended EA and one for NMFS' proposed authorization) provided a total of 82 days for the public to consider and provide input on the marine mammal effects of the 2015 action (which again, is substantively the same as last year's survey), as well as the proposed mitigation, monitoring, and reporting measures for marine mammals.

4. The NSF lead principal investigator (Dr. Gregory Mountain, Rutgers University) posted a public Web site on the Internet at *http://geology.rutgers.edu/slin3d-home* on February 18, 2015 with information about the proposed seismic survey. The Web site clearly outlines the proposed project's goals, presents frequently asked questions in an easy to understand format, describes the *Langseth* and its operations, discusses compliance with federal environmental statutes, and includes clarification that the proposed project is not related to oil & gas activities.

Extending the public comment period would have impacted NSF's continuing science program, through which other Federal agencies and academic institutions use the *Langseth* for upcoming scientific research. Impacts to survey timelines typically cascade into subsequent work, which can have financial and science mission effects on NSF and other entities.

NMFS is aware that this is a sensitive issue and appreciates the interest that the members of the New Jersey Congressional delegation and their constituents have in the protection and conservation of marine mammals and the environment.

Effects Analyses

Comment 2: The Commission commented that NMFS' presentation of the marine mammal species that could be affected, marine mammal densities, take estimation method, and numbers of takes estimated in the **Federal Register** notice differed from Lamont-Doherty's approach presented in their application. The Commission questioned why Lamont-Doherty did not include those species and associated takes included within in their 2015 application given their potential occurrence in the project area and the fact that they were included in the authorization issued by NMFS in 2014. The Commission recommended that, in the future, NMFS require Lamont-Doherty and the NSF to provide revised applications that reflect the best available scientific information concerning the species affected, marine mammal densities, take estimation method, and estimated numbers of takes, before it deems the application complete and publishes a proposed authorization.

Response: Lamont-Doherty submitted their application to NMFS in accordance with the requirements under section 101(a)(5)(D) of the MMPA to provide information that NMFS uses to analyze impacts to marine mammals. NMFS reviewed the application and considered it complete after conducting additional research and reviews which we presented in the notice of proposed Authorization (80 FR 13961, March 17, 2015).

While NMFS encourages applicants to include information on species and species presence within a proposed action area, NMFS uses a wide variety of information when making its determinations under the MMPA. However, NMFS does not solely rely on the information presented in the application. NMFS uses the application as a basis for consultation under the MMPA, conducts an independent review of the information presented, and presents its own information with supporting evidence to provide the best available information on mammal species that could be affected, marine mammal densities, and approaches to take estimation in the notice of proposed Authorization (80 FR 13961, March 17, 2015). NMFS will continue to encourage applicants for MMPA incidental take authorization to provide applications that reflect the best available scientific information and if necessary, require them to submit revised applications reflecting that information.

Comment 3: The Commission commented a revised approach for estimating take in the notice of proposed Authorization (80 FR 13961, March 17, 2015) (which differed from Lamont-Doherty's standard approach of multiplying the ensonified area by marine mammal density to estimate take), and understands through consultation with NMFS staff, that NMFS intends to use another method to estimate take that will likely yield different take estimates than those discussed in the notice of proposed authorization. The Commission expressed concern that public review opportunity is meaningful only if the notice of proposed Authorization contains current information on methodologies to evaluate potential impacts and recommended that NMFS publish a revised proposed Incidental Harassment Authorization in the **Federal Register** with updated estimated numbers of takes and small numbers and negligible impact analyses to provide a more informed public comment opportunity.

Response: NMFS' analysis in this document is based on the best available information after careful consideration of the Commission's comments on a more appropriate method for estimating take, including the Commission's recommendation on a more appropriate method to account for the survey duration of 30 days. Refer to comment 9 for NMFS' rationale regarding our recalculation of estimated takes based on the Commission's recommendation. These changes to the methodology and the resulting estimates do not have any substantial effect on our small numbers and negligible impact analyses and determinations, given that the proportion of animals taken is safely within the bounds of our small numbers practice, and the anticipated severity of impacts has not changed. We agree there may be circumstances where a change to our proposed action (*e.g.,* based on a public comment or an applicant request) may warrant a second notice and comment period before we take final action, but given the changes here we do not believe a second notice and comment period is necessary in this case.

Comment 4: The Commission expressed concerns regarding Lamont-Doherty's use of a ray trace-based model to estimate exclusion and buffer zones for NSF-funded geophysical research. They stated that the model is not conservative because it assumes spherical spreading, a constant sound speed, and no bottom interactions instead of incorporating site-specific environmental characteristics (*e.g.,* sound speed profiles, refraction, bathymetry/water depth, sediment properties/bottom loss, or absorption coefficients).

Response: We acknowledge the Commission's concerns about Lamont-Doherty's current modeling approach for estimating exclusion and buffer zones and also acknowledge that Lamont-Doherty did not incorporate site-specific sound speed profiles, bathymetry, and sediment characteristics of the research area in the current approach to estimate those zones for this proposed seismic survey.

In 2015, Lamont-Doherty explored solutions to this issue by conducting a retrospective sound power analysis of one of the lines acquired during Lamont-Doherty's truncated seismic survey offshore New Jersey in 2014 (Crone, 2015). NMFS presented this information in Table 4 in the notice of proposed Authorization (80 FR 13961, March 17, 2015) and presents this information again later in this notice (see Table 1) with additional information regarding the predicted radii with the upper 95 percent cross-line prediction bound radii.

Briefly, Crone's (2015) preliminary analysis, specific to the proposed survey site offshore New Jersey, confirmed that in-situ measurements and estimates of the 160- and 180-decibel (dB) isopleths collected by the *Langseth's* hydrophone streamer in shallow water were smaller than the predicted exclusion and buffer zones proposed for use in the 2015 survey. Based upon the best available information, the exclusion and buffer zone calculations are appropriate for use in this particular survey.

Lamont-Doherty's application (LGL, 2014) and the NSF's draft amended EA (NSF, 2014) describe the approach to establishing mitigation exclusion and buffer zones. In summary, Lamont-Doherty acquired field measurements for several array configurations at shallow- and deep-water depths during acoustic verification studies conducted in the northern Gulf of Mexico in 2003 (Tolstoy *et al.,* 2004) and in 2007 and 2008 (Tolstoy *et al.,* 2009). Based on the empirical data from those studies, Lamont-Doherty developed a sound propagation modeling approach that conservatively predicts received sound levels as a function of distance from a particular airgun array configuration in deep water. For this proposed survey, Lamont-Doherty developed the shallow-water exclusion and buffer zones for the airgun array based on the empirically-derived measurements from the Gulf of Mexico calibration survey (Fig. 5a in Appendix H of the NSF's 2011 PEIS). Following is a summary of two additional analyses of in-situ data that support Lamont-Doherty's use of the proposed exclusion zones in this particular case.

In 2010, Lamont-Doherty assessed the accuracy of their modeling approach by comparing the sound levels of the field measurements in the Gulf of Mexico study to their model predictions (Diebold *et al.,* 2010). They reported that the observed sound levels from the field measurements fell almost entirely below the predicted mitigation radii curve for deep water (Diebold *et al.,* 2010).

In 2012, Lamont-Doherty used a similar process to develop mitigation radii (*i.e.,* exclusion and buffer zones) for a shallow-water seismic survey in the northeast Pacific Ocean offshore Washington in 2012. Lamont-Doherty conducted the shallow-water survey using an airgun configuration that was approximately 89 percent larger than the total discharge volume proposed for this shallow-water survey (*i.e.,* 6,600 cubic inches (in^3) compared to 700 in^3) and recorded the received sound levels on the shelf and slope off Washington using the *Langseth's* 8-kilometer (km) hydrophone streamer. Crone *et al.* (2014) analyzed those received sound levels from the 2012 survey and reported that the actual distances for the exclusion and buffer zones were two to three times smaller than what Lamont-Doherty's modeling approach predicted. While the results confirm bathymetry's role in sound propagation, Crone *et al.* (2014) were able to confirm that the empirical measurements from the Gulf of Mexico calibration survey (the same measurements used to inform Lamont-Doherty's modeling approach for this survey in shallow water) overestimated the size of the exclusion and buffer zones for the shallow-water 2012 survey off Washington and were thus precautionary, in that particular case.

In summary, at present, Lamont-Doherty cannot adjust their modeling methodology to add the environmental and site-specific parameters as requested by the Commission. We continue to work with the NSF to address the issue of incorporating site-specific information to further inform the analysis and development of mitigation measures in coastal areas for future surveys with Lamont-Doherty and the NSF. NMFS will continue to work with Lamont-Doherty, the NSF, and the Commission on continuing to verify the accuracy of their modeling approach. However, Lamont-Doherty's current modeling approach represents the best available information to reach our determinations for the Authorization. As described earlier, the comparisons of Lamont-Doherty's model results and the field data collected in the Gulf of Mexico, offshore Washington, and offshore New Jersey illustrate a degree of conservativeness built into Lamont-Doherty's model for deep water, which NMFS expects to offset some of the limitations of the model to capture the variability resulting from site-specific factors, especially in shallow water.

Comment 5: The Commission disagreed with Lamont-Doherty's use of extrapolations and correction factors (or a scaling approach) to generate exclusion zones for shallow-water for this proposed survey and stated that the use of those scaling factors for shallow-water surveys is unsubstantiated. The Commission states that because Lamont-Doherty has not verified the applicability of its model to conditions outside the Gulf of Mexico, it recommends that NMFS and/or the respective applicants estimate exclusion and buffer zones using either empirical measurements from the particular survey site *or* a model that accounts for the conditions in the proposed survey area by incorporating site-specific environmental and operational parameters.

Response: See our response to Comment 4. Lamont-Doherty's approach compares the sound exposure level (SEL) outputs between two different types of airgun configurations in deep water. This approach allows them to derive scaling relationships between the arrays and extrapolate empirical measurements or model outputs to different array sizes and tow depths. For example, if an Airgun Source A produces sound energy that is three times greater than Airgun Source B in deep water, it is reasonable to infer that the shallow-water mitigation zones for Airgun Source A would be three times larger than the shallow-water mitigation zones for Airgun Source B. This approach of deriving scaling factors is an appropriate approach to extrapolate existing empirical measurements for shallow water. Thus, this is the best available information to extrapolate the in-situ shallow water measurements to array tow depths without field verification studies (Crone *et al.,* 2014; Barton and Diebold, 2006).

Based upon NMFS and the Commission's recommendation, Lamont-Doherty used in-situ empirical measurements from the 2014 survey to compare them to the accuracy of the predicted mitigation zones used in the 2014 and 2015 survey. The preliminary in-situ measurement results from Crone (2015) show that the predicted mitigation exclusion zones are appropriate. This analysis also confirmed the effectiveness of Lamont-Doherty's use of scaling factors. Based on the best available information (Diebold *et al.,* 2010; Crone *et al.,* 2014; and Crone, 2015), NMFS concludes that in the case for this survey, requiring the use of a model with environmental characteristics of the specific study area is not necessary.

Lamont-Doherty has conveyed to us that additional modeling efforts to refine the process and conduct comparative analysis may be possible with the availability of research fund and other

resources. Obtaining research funds is typically through a competitive process, including those submitted to Federal agencies. The use of models for calculating buffer and exclusion zone radii and for developing take estimates is not a requirement of the MMPA incidental take authorization process. Furthermore, our agency does not provide specific guidance on model parameters nor prescribes a specific model for applicants as part of the MMPA incidental take authorization process. There is a level of variability not only with parameters in the models, but also the uncertainty associated with data used in models, and therefore the quality of the model results submitted by applicants. NMFS, however, considers this variability when evaluating applications. Applicants use models as a tool to evaluate potential impacts, estimate the number of and type of takes of marine mammals, and for designing mitigation. NMFS takes into consideration the model used and its results in determining the potential impacts to marine mammals; however, it is just one component of our analysis during the MMPA consultation process as we also take into consideration other factors associated with the proposed action, (*e.g.,* geographic location, duration of activities, context, intensity, *etc.*).

Comment 6: The Commission also commented on Lamont-Doherty's retrospective sound analysis to verify the accuracy of its acoustic modeling approach for estimating exclusion and buffer zones that NMFS presented in the notice of proposed Authorization (80 FR 13961, March 17, 2015) (Crone, 2015). The Commission understands that Crone (2015) used a simple logarithmic regression model to fit the data that were collected 500 m to 3.5 km in line from the source; estimated the cross-line mean based on a 1.63 correction factor (Carton, pers. comm.); and used a 95th percentile fit to the regression model for all shots along the line. The Commission states, however, because the closest hydrophone was 500 m from the source, Lamont-Doherty extrapolated the distances to the 180-dB re 1 μPa threshold based on the model—in some instances, the extrapolation was more than 400 m. The Commission also stated that Crone (2015) did not provide similar information provided in Tolstoy *et al.* (2009) and Crone *et al.* (2014), such as the slope or the y-intercept for the logarithmic regression model; the basis for the cross-line correction factor; the sound speed profile when the measurements were collected, or whether the near-field extrapolated data would have been better fitted with another model, since propagation loss in the near- and far-field may not necessarily be the same.

The Commission further stated that polynomial and non-parametric cubic spline models best represented the data off Washington (Crone *et al.,* 2014), neither of which are logarithmic in nature and a linear least squares method was fit to the typical spherical spreading model to extrapolate the 160-dB re 1 μPa radii to account for radii that fall beyond the length of the hydrophone streamer.

Response: The NSF and Lamont-Doherty shared their preliminary analysis presented in Crone's draft report (2015) to both NMFS and the Commission and provided additional clarifying information via email to both parties including information on some of the points identified in the Commission's letter. Here, we provide additional information to inform the Commission's understanding of the 2015 in-situ analysis.

First, Lamont-Doherty believes that it is not correct to call the fitting parameters the *slope* and *y-intercept,* as one would do for a straight line using Cartesian coordinates and considers the use of *constant* and *exponent* parameters as more appropriate terminology when discussing the Crone (2015) results.

Second, Lamont-Doherty confirms that the regression model used in Crone (2015) is the same as equation 6 in Crone *et al.,* (2014), but without the linear term, which comes third in the formulation. There are fitting parameters (*i.e.,* the constant and exponent) for every shot along the line. Because Crone (2015) used a method to fit the data (which changes with every shot) for approximately 3,000 shots, it is not reasonable to list the data for every shot. However, Lamont-Doherty will continue to evaluate this exponent change variability along the line.

Third, Lamont-Doherty confirms that Crone (2015) estimated the parameters using linear least squares. However, in this case, and for equation 6 in Crone *et al.,* (2014), both have a logarithmic term, which is appropriate since Crone (2015) employs linear regression models. Thus, the fitting model used is appropriate and the results for the 160-dB distance would likely not change significantly using another model to fit the data. In March, 2015, Lamont-Doherty also provided clarification to the Commission that the near-field data best fit using a logarithmic regression model.

Lamont-Doherty offered to discuss the information presented in Crone (2015) with Commission staff and members of its Committee of Scientific Advisors; however, the availability of all parties was limited before the conclusion of the public comment period and Dr. Crone was unable to discuss the results directly with the Commission prior to their submission of their letter. Lamont-Doherty and the NSF welcome the opportunity to further discuss these results in the near future with the Commission and NMFS.

Comment 7: The Commission states that NMFS misrepresented the data from Crone (2015) in Table 4 of the **Federal Register** notice (page 13981, 80 FR 13961, March 17, 2015) by including the in-line measured and extrapolated means (78 and 1,521 m for the 180- and 160-dB re 1 μPa thresholds, respectively) rather than the 95th percentile cross-line predicted means, which Lamont-Doherty generally uses for its best-fit model.

Further, the Commission states that Crone (2015) indicated that the contour of the seafloor along the line was quite flat and varied by only a few meters along most of its 50-km length, which limited the shadowing and focusing that have been seen in other datasets (Crone *et al.,* 2014). Crone (2015) then noted that the variability observed in Figures 3 and 4 for the 180- and 160-dB re 1 μPa thresholds, respectively, likely was caused by the shadowing and focusing of seismic energy from bathymetric features. The Commission stated that Crone's statements did not comport.

Response: NMFS's comparison of the predicted radii for the 2014 survey with the in-situ measured radii for the 2014 survey was not misrepresented as suggested by the Commission as the information and analysis provided were accurate. However, NMFS agrees with the Commission that we could have also provided a comparison of the predicted radii with the upper 95 percent cross-line prediction bound radii. We acknowledge that those results show that the percent differences in the model predicted radii and the 95th percentile cross-line predicted radii based on in-situ measurements were approximately 28 and 33 percent smaller for the 180- and 160-dB re: 1 μPa thresholds. Thus, the results demonstrate that the in situ measured and estimated 160 and 180-dB isopleths for the 2014 survey were significantly smaller than the predicted radii and therefore conservative, as emphasized by Lamont-Doherty in its application and in supporting environmental documentation. We present the complete information here in Table 1 with the additional information regarding the predicted radii with the upper 95 percent cross-line prediction bound radii.

TABLE 1—SUMMARY OF RMS POWER LEVELS WITH ESTIMATED MITIGATION RADII CALCULATED USING STREAMER DATA, AND IN THE LAST COLUMN THE PREDICTED RADII USED DURING THE 2014 SURVEY

RMS Level (dB re 1 μPa)	In-line mean (m)	Estimated cross-line mean (m)	Upper 95% cross-line prediction bound (m)	Predicted levels used for the 2014 survey (m)
180	78	128	273	378 at 4.5-m tow depth; 439 at 6-m tow depth.
160	1,521	2,479	3,505	5,240 at 4.5 m tow depth; 6,100 at 6-m tow depth.

With respect to Crone's (2015) observations on shadowing and focusing of seismic energy, Crone (2015) did indicate that the contour of the seafloor along the line was quite flat and varied by only a few meters along most of its 50-km length, resulting in limited shadowing and focusing of seismic energy from bathymetric features frequently seen in other datasets (Crone *et al.* 2014). Crone, however, did not state that effects from shadowing and focusing were entirely absent from the 2014 data set. In fact, he noted that the limited amount of shadowing and focusing of seismic energy from bathymetric features present likely caused the minor variability observed.

Comment 8: The Commission also recommends that we require Lamont-Doherty to re-estimate the proposed zones and take estimates using site-specific parameters (including at least sound speed profiles, bathymetry, and sediment characteristics) for the proposed Authorization. They also recommend that we require the same for all future incidental harassment authorization requests submitted by Lamont-Doherty, the NSF, and other related entities.

Response: See NMFS' responses to Comment 4 and 5. There are many different modeling products and services commercially available that applicants could potentially use in developing their take estimates and analyses for MMPA authorizations. These different models range widely in cost, complexity, and the number of specific factors that one can consider in any particular modeling run. NMFS does not, and does not believe that it is appropriate to, prescribe the use of any particular modeling package. Rather, NMFS evaluates each applicant's approach independently in the context of their activity. In cases where an applicant uses a simpler model and there is concern that a model might not capture the variability across a parameter(s) that is not represented in the model, conservative choices are often made at certain decision points in the model to help ensure that modeled estimates are buffered in a manner that would not result in the agency underestimating takes or effects. In this case, results have shown that Lamont-Doherty's model reliably and conservatively estimates mitigation radii in deep water. First, the observed sound levels from the field measurements fell almost entirely below Lamont-Doherty's estimated mitigation radii for deep water (Diebold *et al.,* 2010). These conservative mitigation radii are the foundation for Lamont-Doherty's shallow water radii used in this survey.

Second, Lamont-Doherty's analysis of measured shallow water radii during the 2012 survey offshore Washington (Crone *et al.,* 2014) show that Lamont-Doherty's modeled radii for the Washington survey overestimated the measured 160-dB radii by approximately 10 km (6.2 mi) and overestimated the measured 180-dB radii by approximately 500 m (1,640 ft) (Crone *et al.,* 2014). Based on Crone *et al.*'s (2014) findings, NMFS find that Lamont-Doherty's shallow-water radii based on the Gulf of Mexico calibration study were larger (*i.e.,* more conservative) for that particular study. Based on these empirical data, which illustrate the model's conservative exposure estimates across two sites, as well as the preliminary results from a third site offshore New Jersey (Crone, 2015), NMFS finds that Lamont-Doherty reasonably estimates sound exposures for this survey.

Comment 9: The Commission acknowledges that NMFS' attempt to address shortcomings in Lamont-Doherty's method to estimate take by developing an alternate approach based on the Commission's recommendation in its public comments on the 2014 survey (see page 38500, 79 FR 38496, July 08, 2014). NMFS' method used the total ensonified area (including overlap and the 25 percent contingency) for the 30 days multiplied by: (1) The revised density estimates from the SERDP SDSS Marine Animal Model Mapper tool for the summer months (DoN, 2007; accessed on February 10, 2015); (2) an adjustment factor of 25 percent based on Wood *et al.* (2012); and (3) an estimate of re-exposure (a ratio of 35.5) overlap of the survey.

The Commission commented that the area times the density method, which still serves as the basis for NMFS' proposed method, assumes a snapshot approach for take estimation (*i.e.,* uniform distribution) and does not account for the survey occurring over a 30 day period. Thus, the Commission states that NMFS did not incorporate a time element into the take estimation method and did not apply the Wood *et al.* (2012) correction factor of 1.25 correctly.

The Commission understands that following publication of the **Federal Register** notice, NMFS began to revise the take estimates based on a different methodology for the proposed survey. The Commission understands that the total numbers of exposures likely will decrease but the estimated numbers of individuals that could be taken likely will increase. If NMFS chooses not to amend and republish its notice, the Commission recommends that NMFS: (1) Use one of the two methods described in their letter to estimate the total number of takes for each species/stock for the survey; and (2) if NMFS intends to estimate the total number of individuals for each species/stock taken during the survey, include a review of the applicable scientific literature regarding migratory, residence, and foraging patterns for the various species off the East coast and relate those data to the 30-day survey period for the proposed survey off New Jersey.

Response: NMFS agrees with the Commission's recommendation to appropriately include a time component into our calculations and has revised its take estimation methodology for the proposed survey by following their recommendation to estimate take in the following manner: (1) Calculate the total area (not including contingency or overlap) that the *Langseth* would ensonify within a 24-hour period (*i.e.,* a daily ensonified area); (2) multiply the daily ensonified area by each species-specific density (when available) to derive the expected number of instance of exposures to received levels greater than or equal to 160 dB re: 1 μPa on a given day. NMFS takes this product (*i.e.,*

the expected number of instance of exposures within a day) and multiplies it by the number of survey days (30) with 25 percent contingency (*i.e.,* a total of 38 days). This approach assumes a 100 percent turnover of the marine mammal population within the area for those species of marine mammals that had density estimates from the SERDP SDSS summer NODE data. For those species of marine mammals where density estimates were not available in the SERDP SDSS Marine Animal Model Mapper tool for the summer months (DoN, 2007; accessed on February 10, 2015) dataset because of their limited or rare occurrence in the survey area, we used additional information (CETAP, 1982; AMAPPS, 2010, 2011, and 2013) to estimate take.

We present this information later in this notice (see Table 4 in this notice) and note here that our revised approach does not include the use of a turnover rate nor does it rely on the use of Wood *et al.,* 2012 to determine take estimates, based on the information presented in the Commission's letter on the non-applicability of that data set for our calculations.

The method recommended by the Commission is a way to help understand the instances of exposure above the Level B threshold, however, we note that method would overestimate the number of individual marine mammals exposed above the 160-dB threshold.

Comment 10: The New Jersey Marine Fisheries Council (NJMFC) commented on the timing of the proposed study and effects to striped bass, blue fish, and black sea bass. They stated that the testing would affect fish behavior and distribution (avoidance of areas), schooling behavior and their ability to locate food. They also stated that the proposed timeframe for the study would take place during the peak abundance and fishing activity for many of New Jersey fisheries resulting in poor fish health. The NJMFSC also requested that NMFS not issue an Incidental Harassment Authorization for the take of marine mammals. The SandyHook SeaLife Foundation also submitted similar concerns stating that the survey would disperse fish, the result of which will negatively affect New Jersey's recreational and commercial fishing industry during the tourist season.

Similarly, Clean Ocean Action (COA) also requested that Lamont-Doherty not conduct the survey during the summer months and that NMFS consider alternate survey times to avoid times of peak marine mammal activity.

Finally, the New Jersey Department of Environmental Protection (NJDEP) also submitted comments expressing concern for effects to marine mammal habitat and for the potential impacts to New Jersey's marine mammal boat tour operators and the recreational and commercial fishing industry.

Response: The NJMFC did not provide references supporting their statement which limits our ability to respond to the commenters' statements. However, we refer readers to the notice of the proposed Authorization (page 13977, 80 FR 13961, March 17, 2015) which provided information on the anticipated effects of airgun sounds on fish, fish behavior, and invertebrates in the context of those animals as marine mammal prey.

NMFS considered the effects of the survey on marine mammal prey (*i.e.,* fish and invertebrates), as a component of marine mammal habitat, in the notice of the proposed Authorization (80 FR 13961, March 17, 2015). Studies have shown both decreases and increases in fisheries catch rates and behavioral changes in captive marine fish and squid during exposure to seismic sound (Lokkeborg *et al.,* 2012; Fewtrell and McCauley, 2012). We acknowledge that disturbance of prey species has the potential to adversely affect marine mammals while foraging. However, given the limited spatio-temporal scale of the survey, the survey would ensonify only a small fraction of available habitat at any one time because the vessel is continually moving during data acquisition. We would expect prey species to return to their pre-exposure behavior once seismic firing ceased (Lokkeborg *et al.,* 2012; Fewtrell and McCauley, 2012). Although there is a potential for injury to fish or marine life in close proximity to the vessel, we expect that prey responses would have temporary effects on a marine mammal's ability to forage in the immediate survey area. However, we don't expect that temporary reductions in feeding ability would reduce an individual animal's overall feeding success.

Laboratory studies have observed permanent damage to sensory epithelia for captive fish exposed at close range to a sound source (McCauley *et al.,* 2003) and abnormalities in larval scallops after exposure to low frequency noise in tanks (de Soto *et al.,* 2013); however, wild fish are likely to move away from a seismic source (Fewtrell and McCauley, 2012). Finally, other studies provide examples of no fish mortality upon exposure to seismic sources (*e.g.,* Popper *et al.,* 2005; Boeger *et al.,* 2006).

In summary, in examining impacts to fish as prey species for marine mammals, we expect fish to exhibit a range of behaviors including no reaction or habituation (Pena *et al.,* 2013) to startle responses and/or avoidance (Fewtrell and McCauley, 2012). We expect that the seismic survey would have no more than a temporary and minimal adverse effect on any fish or invertebrate species that serve as prey species for marine mammals, and therefore consider the potential impacts to marine mammal habitat minimal as well.

Regarding the survey's impacts on commercial and recreational fishing, we refer readers to the NSF's amended EA for this survey (Sections III and IV) which includes consideration of the effects of sound on marine invertebrates, fish, and fisheries and the effects of the survey on the recreational and commercial fishing sectors in New Jersey. The NSF also completed an ESA Section 7 consultation to address the effects of the research seismic survey on ESA-listed species within the proposed area as well as a consultation under the Magnuson–Stevens Fishery Conservation and Management Act for essential fish habitat.

Regarding the timing of the proposed survey, we analyzed the specified activity, including the specified dates, as presented in Lamont-Doherty's application and were able to make the requisite findings for issuing the Authorization. We do not have the authority to cancel Lamont-Doherty's research seismic activities under Section 101(a)(5)(D) of the MMPA, as that authority lies with the NSF. NMFS and the NSF considered in their EAs, a modification of the survey schedule to an alternate time. However, we determined this could result in an increase in the number of takes of North Atlantic right whales due to their increased presence off New Jersey in the fall, spring, and winter months. Whitt *et al.* (2013) concluded that right whales were not present in large numbers off New Jersey during the summer months (Jun 22–Sep 27) which overlaps with the effective dates of the seismic survey (Jun through August). In contrast, peak acoustic detections for North Atlantic right whales occurred in the winter (Dec 18–Apr 9) and in the spring (Apr 10–Jun 21) (Whitt, *et al.,* 2013).

Comment 11: The NJDEP asserted that there was insufficient information to conclude that the impacts to the marine mammals that could potentially occur in the action area would be negligible. They state that marine mammals, especially cetaceans, would be adversely affected by noise created during seismic testing activities; noise pollution, in the form of repeated or

prolonged sounds would adversely impact marine mammals by disrupting otherwise normal behaviors associated with migration, feeding, alluding predators, resting, and breeding, *etc.*; and any alterations to these behaviors would jeopardize the survival of an individual simply by increasing efforts directed at avoidance of the noise and the perceived threat. They also state that that the project will add to an existing and increasing anthropogenic noise pollution which may already be negatively impacting species.

Response: NMFS disagrees with the commenter's assertions regarding our neglible impact determinations under the MMPA discussed in the notice of proposed Authorization (80 FR 13961, March 17, 2015). The NJDEP did not provide did not provide references supporting their statements related to marine mammals which limits our ability to respond to the commenter's statements. We refer to our detailed discussion of the potential effects of the proposed survey on marine mammals (pages 13967–13979) which covers acoustic impacts, masking, behavioral disturbance, and non-auditory physical effects to cetaceans and pinnipeds.

Additionally, NMFS has issued a Biological Opinion under the ESA that concluded that the issuance of the Authorization and the conduct of the seismic survey were not likely to jeopardize the continued existence of blue, fin, humpback, North Atlantic right, sei, and sperm whales. The Opinion also concluded that the issuance of the Authorization and the conduct of the seismic survey would not affect designated critical habitat for these species.

Comment 12: COA expressed concerns related to the survey's impact on the local (coastal) bottlenose dolphin population. They include: cumulative adverse impacts of the survey in light of the ongoing Unusual Mortality Event (UME); potential increases in marine mammal strandings due to the use of the multibeam echosounder; the survey's temporal overlap with the bottlenose dolphin calving period; and the potential heightened sensitivity of bottlenose dolphin calves to anthropogenic noise.

Response: In 2013, NMFS declared a UME for elevated bottlenose dolphin strandings along the Atlantic coast (New York through Florida). From July 1, 2013–April 5, 2015, NMFS has recorded a total of 1,660 strandings from New York to Florida. Of those strandings, 153 dolphins have stranded in New Jersey, which is significantly higher than the average annual bottlenose dolphin stranding rate of 15 strandings (based on 2007–2012 data).

NMFS expects that the survey's activities would result, at worst, in a temporary modification in behavior, temporary changes in animal distribution, and/or low-level physiological effects (Level B harassment) of bottlenose dolphins. We expect these impacts to be minor at the individual level and we do not anticipate impacts on the population or impacts to rookeries, mating grounds, and other areas of similar significance.

The Authorization outlines reporting measures and response protocols with the Greater Atlantic Region Stranding Coordinator intended to minimize the impacts of, and enhance the analysis of, any potential stranding in the survey area. Lamont-Doherty's activities are approximately 20 km (12 mi) away from the habitat in which the coastal bottlenose dolphins are expected to occur (Toth *et al.,* 2011; 2012), which means that area is not expected to be ensonified above 160 dB and that take of this stock or calves of this stock (*i.e.,* the Western North Atlantic Northern Migratory Coastal) is not anticipated. Additionally, airgun pulses are outside of the range of frequencies in which dolphin hearing is most sensitive, and Schlundt *et al.'s* (2013) study suggests that the low-frequency content of air gun impulses may have fewer predicted impacts on bottlenose dolphins. Last, we do not have specific information related to how any acoustic stressors may or may not exacerbate the effects of the UME with bottlenose dolphins. However, based on the fact that the acoustic effects are expected to be limited to behavioral harassment, and the survey is constantly moving (predominantly far offshore and well away from coastal species and the associated calving areas), we do not anticipate any focused adverse effects to animals involved in the UME.

Regarding COA's concerns about increased strandings, we note that Lamont-Doherty has not ever experienced a stranding event associated with their activities during the past 10 years that NMFS has issued Authorizations to them. In the past decade of seismic surveys conducted carried out by the *Langseth,* protected species observers and other crew members have neither observed nor reported any seismic-related marine mammal injuries or mortalities.

The NSF's EA (NSF, 2014) acknowledges that scientists have conducted numerous 2–D seismic surveys in the general vicinity of the proposed survey from 1979 to 2002. The previous surveys used different airgun array configurations (*e.g.,* a 6-airgun, 1,350-in^3 array in 1990; a single, 45-in^3 GI Gun in 1996 and 1998; and two 45-in^3 GI Guns in 2002). The researchers did not observe any seismic sound-related marine mammal related injuries or mortality, or impacts to fish during these past seismic surveys in the proposed survey area (NSF, 2014; G. Mountain, Pers. Comm.).

We have considered the potential for behavioral responses such as stranding and indirect injury or mortality from Lamont-Doherty's use of the multibeam echosounder. In 2013, an International Scientific Review Panel (ISRP) investigated a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system (Southall *et al.,* 2013) associated with the use of a high-frequency mapping system. The report indicated that the use of a 12-kHz multibeam echosounder was the most plausible and likely initial behavioral trigger of the mass stranding event. This was the first time that a relatively high-frequency mapping sonar system had been associated with a stranding event. However, the report also notes that there were several site- and situation-specific secondary factors that may have contributed to the avoidance responses that lead to the eventual entrapment and mortality of the whales within the Loza Lagoon system (*e.g.,* the survey vessel transiting in a north-south direction on the shelf break parallel to the shore, may have trapped the animals between the sound source and the shore driving them towards the Loza Lagoon). They concluded that for odontocete cetaceans that hear well in the 10–50 kHz range, where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts (Southall, *et al.,* 2013). However, the risk may be very low given the extensive use of these systems worldwide on a daily basis and the lack of direct evidence of such responses previously reported (Southall, *et al.,* 2013).

Given that Lamont-Doherty proposes to conduct the survey offshore and the *Langseth* is not conducting the survey parallel to any coastline, we do not anticipate that the use of the source during the seismic survey would entrap marine mammals between the vessel's sound sources and the New Jersey coastline. In addition, the Authorization includes reporting measures and response protocols to minimize the impacts of, and enhance the analysis of,

any potential stranding in the survey area.

With respect to Clean Ocean Action's concerns about the survey's temporal overlap with the bottlenose dolphin calving period, we note again that Lamont-Doherty's study area is approximately 20 km (12 mi) away from the identified habitats for coastal bottlenose dolphins and their calves in Toth *et al.* (2011, 2012) thereby reducing further the likelihood of causing an effect on this species or stock.

In response to COA's concerns that dolphin calves may be limited in their ability to flee the ensonified area due to their dependence on their mothers and small size, we considered several studies which note that seismic operators and protected species observers regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (*e.g.,* Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009; Moulton and Holst, 2010). Also, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (*e.g.,* Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (*e.g.,* Stone and Tasker, 2006; Weir, 2008, Barry *et al.,* 2010; Moulton and Holst, 2010). We note that in most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance. In considering the potential heightened sensitivity of neonate dolphins to noise, Schlundt *et al.* (2013) suggest that the potential for airguns to cause hearing loss in dolphins is lower than previously predicted, perhaps as a result of the low-frequency content of air gun impulses compared to the high-frequency hearing ability of dolphins.

We do not expect marine mammals to experience any repeated exposures at very close distances to the sound source because Lamont-Doherty would implement the required shutdown and power down mitigation measures to ensure that marine mammals do not approach the applicable exclusion zones for Level A harassment. In addition, we anticipate that the required ramp-up procedures at the start of the survey or anytime after a shutdown of the entire array would ''warn'' marine mammals in the vicinity of the airguns, and provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities or annoyance at higher exposure levels.

Comment 13: COA states that we did not present species information for North Atlantic right whales in our analyses, including the Whitt *et al.* (2013) peer-reviewed study demonstrating North Atlantic right whale presence off the New Jersey coast year-round, particularly in the spring and summer months.

Response: NMFS disagrees. Table 1 in our notice of proposed authorization (pages 13966 and 13987, 80 FR 13961, March 17, 2015) specifically states that we base the year-round seasonal presence of North Atlantic right whales on the Whitt *et al.* (2013) paper. Whitt *et al.* (2013) conducted acoustic and visual surveys for North Atlantic right whales off the coast of New Jersey from January 2008 to December 2009 and observed one sighting of a cow-calf pair in May 2008, but no other sightings of cow-calf pairs throughout the remainder of the study. In the discussion of the Whitt *et al.* (2013) data, NMFS concluded that it was appropriate to increase Lamont-Doherty's original request for incidental take related to North Atlantic right whales from zero to three (3) to be conservative in estimating potential take for cow/calf pairs. NMFS based this adjustment on several sources (AMAPPS, 2010, 2011, and 2013; and Whitt *et al.,* 2013) that reported sighting information on the presence of North Atlantic right whales (including a cow/calf pair) in the survey area.

Monitoring and Reporting

Comment 14: The Commission has indicated that monitoring and reporting requirements should provide a reasonably accurate assessment of the types of taking and the numbers of animals taken by the proposed activity. They state that ''. . . the assessments should account for animals at the surface but not detected [*i.e.,* g(0) values] and for animals present but underwater and not available for sighting [*i.e.,* f(0) values]. They further state that g(0) and f(0) values are essential to accurately assess the numbers of marine mammals taken during geophysical surveys based on the extent of the Level B harassment zones extending from more than 10 km in some instances and to more than 26 km in other instances. In light of the comments, the Commission recommends that NMFS consult with the funding agency (*i.e.,* the NSF) and individual applicants (*e.g.,* Lamont-Doherty and other related entities) to develop, validate, and implement a monitoring program that provides a scientifically sound, reasonably accurate assessment of the types of marine mammal takes and the actual numbers of marine mammals taken, accounting for applicable g(0) and f(0) values. In previous letters, the Commission has not suggested that the NSF and Lamont-Doherty collect information in the field to support the development of survey-specific correction factors (80 FR 4892); rather they suggest that Lamont-Doherty and other relevant entities to continue to collect appropriate sightings data in the field which NMFS can then pool to determine g(0) and f(0) values relevant to the various geophysical survey types. The Commission would welcome another meeting to help further this goal.

Response: NMFS' implementing regulations require that applicants include monitoring that will result in ''an increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities . . .'' This increased knowledge of the level of taking could be qualitative or relative in nature, or it could be more directly quantitative. Scientists use g(0) and f(0) values in systematic marine mammal surveys to account for the undetected animals indicated above, however, these values are not simply established and the g(0) value varies across every observer based on their sighting acumen. While we want to be clear that we do not generally believe that post-activity take estimates using f(0) and g(0) are required to meet the monitoring requirement of the MMPA, in the context of the NSF and Lamont-Doherty's monitoring plan, we agree that developing and incorporating a way to better interpret the results of their monitoring (perhaps a simplified or generalized version of g(0) and f(0)) is desirable. We are continuing to examine this issue with the NSF to develop ways to improve their post-survey take estimates. We will continue to consult with the Commission and NMFS scientists prior to finalizing any future recommendations.

We note that current monitoring measures for past and current Authorizations for research seismic surveys require the collection of visual observation data by protected species observers prior to, during, and after airgun operations. This data collection may contribute to baseline data on marine mammals (presence/absence) and provide some generalized support for estimated take numbers (as well as providing data regarding behavioral responses to seismic operation that are

observable at the surface). However, it is unlikely that the information gathered from these cruises alone would result in any statistically robust conclusions for any particular species because of the small number of animals typically observed.

MMPA Concerns

Comment 15: Clean Ocean Action states that NMFS must ensure that the Authorization complies with the MMPA and requests that NMFS deny the Authorization based on their opinion that the potential impacts to marine mammals are incompatible with the prohibitions of the MMPA and that the take would be more than negligible.

Response: Our **Federal Register** notices for the proposed and final Authorization lay out our analysis and rationale for our conclusions.

Based on the analysis of the likely effects of the specified activity on marine mammals and their habitat contained within this document, the NSF's amended EA and our own EA, and taking into consideration the implementation of the mitigation and monitoring measures, we find that Lamont-Doherty's proposed activity would result in the take of small numbers of marine mammals, would have a negligible impact on the affected species or stocks, and would not result in an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses as no subsistence users would be affected by the proposed action.

Acoustic Thresholds

Comment 16: COA states that the current NMFS 160-decibel (dB) re: 1 µPa threshold for Level B harassment does not reflect the best available science and is not sufficiently conservative.

Response: NMFS' practice has been to apply the 160 dB re: 1 µPa received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Specifically, we derived the 160 dB threshold data from mother-calf pairs of migrating gray whales (Malme *et al.,* 1983, 1984) and bowhead whales (Richardson *et al.,* 1985, 1986) responding to seismic airguns. We acknowledge there is more recent information bearing on behavioral reactions to seismic airguns, and we discuss the science on this issue qualitatively in our analysis of potential effects to marine mammals (80 FR 13961, March 17, 2015), but those data only illustrate how complex and context-dependent the relationship is between the two, and do not, as a whole, invalidate the current threshold. Accordingly, it is not a matter of simply replacing the existing threshold with a new one.

NMFS is working to develop guidance for assessing the effects of anthropogenic sound on marine mammals, including thresholds for behavioral harassment. Until NMFS finalizes that guidance (a process that includes internal agency review, public notice and comment, and peer review), we will continue to rely on the existing criteria for Level A and Level B harassment shown in Table 5 of the notice for the proposed authorization (80 FR 13961, March 17, 2015).

As mentioned in the **Federal Register** notice for the proposed authorization (80 FR 13961, March 17, 2015), we expect that the onset for behavioral harassment is largely context dependent (*e.g.,* behavioral state of the animals, distance from the sound source, etc.) when evaluating behavioral responses of marine mammals to acoustic sources. Although using a uniform sound pressure level of 160-dB re: 1 µPa for the onset of behavioral harassment for impulse noises may not capture all of the nuances of different marine mammal reactions to sound, it is a reasonable and workable way to evaluate and manage/regulate anthropogenic noise impacts on marine mammals as NMFS considers more complex options.

Comment 17: COA requested that we use a behavioral threshold below 160 dB for estimating take based on results reported in Clark and Gagnon (2006), MacLeod *et al.* (2006), Risch *et al.* (2012), McCauley *et al.* (1998), McDonald *et al.* (1995), Bain and Williams (2006), DeRuiter *et al.* (2013). They also cite comments submitted by Clark *et al.* (2012) on the Arctic Ocean Draft Environmental Impact Statement regarding NMFS' current acoustic thresholds.

Response: NMFS is constantly evaluating new science and how to best incorporate it into our decisions. This process involves careful consideration of new data and how it is best interpreted within the context of a given management framework. Each of these cited articles emphasizes the importance of context (*e.g.,* behavioral state of the animals, distance from the sound source, etc.) in evaluating behavioral responses of marine mammals to acoustic sources.

These papers and the studies discussed in our notice of proposed authorization (80 FR 13961, March 17, 2015) note that there is variability in the behavioral responses of marine mammals to noise exposure. However, it is important to consider the context in predicting and observing the level and type of behavioral response to anthropogenic signals (Ellison *et al.,* 2012). There are many studies showing that marine mammals do not show behavioral responses when exposed to multiple pulses at received levels at or above 160 dB re: 1 µPa (*e.g.,* Malme *et al.,* 1983; Malme *et al.,* 1984; Richardson *et al.,* 1986; Akamatsu *et al.,* 1993; Madsen and Mohl, 2000; Harris *et al.,* 2001; Miller *et al.,* 2005; and Wier, 2008). And other studies show that whales continue important behaviors in the presence of seismic pulses (*e.g.,* Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999a, 1999b; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005, 2006; Dunn and Hernandez, 2009).

In a passive acoustic research program that mapped the soundscape in the North Atlantic Ocean, Clark and Gagnon (2006) reported that some fin whales (*Balaenoptera physalus*) stopped singing for an extended period starting soon after the onset of a seismic survey in the area. The study did not provide information on received levels or distance from the sound source. The authors could not determine whether or not the whales left the area ensonified by the survey, but the evidence suggests that most if not all singers remained in the area (Clark and Gagnon, 2006). Support for this statement comes from the fact that when the survey stopped temporarily, the whales resumed singing within a few hours and the number of singers increased with time (Clark and Gagnon, 2006). Also, they observed that one whale continued to sing while the seismic survey was actively operating (Figure 4; Clark and Gagnon, 2006).

The authors conclude that there is not enough scientific knowledge to adequately evaluate whether or not these effects on singing or mating behaviors are significant or would alter survivorship or reproductive success (Clark and Gagnon, 2006). Thus, to address COA's concerns related to the results of this study, it is important to note that the Lamont-Doherty's study area is well away from any known breeding/calving grounds for low frequency cetaceans and approximately 20 km (12 mi) away from the identified habitats for coastal bottlenose dolphins and their calves in Toth *et al.* (2011, 2012) thereby reducing further the likelihood of causing an effect on marine mammals.

MacLeod *et al.* (2006) discussed the possible displacement of fin and sei whales related to distribution patterns of the species during a large-scale seismic survey offshore the west coast of Scotland in 1998. The authors

hypothesized about the relationship between the whale's absence and the concurrent seismic activity, but could not rule out other contributing factors (Macleod, *et al.,* 2006; Parsons *et al.,* 2009). We would expect that marine mammals may briefly respond to underwater sound produced by the seismic survey by slightly changing their behavior or relocating a short distance. Based on the best available information, we expect short-term disturbance reactions that are confined to relatively small distances and durations (Thompson *et al.,* 1998; Thompson *et al.,* 2013), with no adverse impacts on annual rates of recruitment or survival.

Regarding the suggestion that blue whales ''significantly'' changed course during the conduct of a seismic survey offshore Oregon, we disagree. We considered the McDonald *et al.* (1995) paper in the notice for the proposed authorization (80 FR 13961, March 17, 2015). In brief, the study tracked three blue whales relative to a seismic survey with a 1,600 in3 airgun array (higher than Lamont-Doherty's 700 in^3 airgun array). The whale started its call sequence within 15 km (9.3 mi) from the source, then followed a pursuit track that decreased its distance to the vessel where it stopped calling at a range of 10 km (6.2 mi) (estimated received level at 143 dB re: 1 μPa (peak-to-peak) (McDonald *et al.,* 1995). After that point, the ship increased its distance from the whale, which continued a new call sequence after approximately one hour (McDonald *et al.,* 1995) and 10 km (6.2 mi) from the ship. The authors suggested that the whale had taken a track paralleling the ship during the cessation phase but observed the whale moving diagonally away from the ship after approximately 30 minutes continuing to vocalize (McDonald *et al.,* 1995). The authors also suggest that the whale may have approached the ship intentionally or perhaps was unaffected by the airguns. They concluded that there was insufficient data to infer conclusions from their study related to blue whale responses (McDonald *et al.,* 1995).

Risch *et al.* (2012) documented reductions in humpback whale (*Megaptera novaeangliae*) vocalizations in the Stellwagen Bank National Marine Sanctuary concurrent with transmissions of the Ocean Acoustic Waveguide Remote Sensing (OAWRS) low-frequency fish sensor system at distances of 200 kilometers (km) from the source. The recorded OAWRS produced a series of frequency modulated pulses and the signal received levels ranged from 88 to 110 dB re: 1 μPa (Risch *et al.,* 2012). The authors hypothesize that individuals did not leave the area but instead ceased singing and noted that the duration and frequency range of the OAWRS signals (a novel sound to the whales) were similar to those of natural humpback whale song components used during mating (Risch *et al.,* 2012). Thus, the novelty of the sound to humpback whales in the study area provided a compelling contextual probability for the observed effects (Risch *et al.,* 2012). However, the authors did not state or imply that these changes had long-term effects on individual animals or populations (Risch *et al.,* 2012), nor did they necessarily rise to the level of harassment. However, (Gong *et al.* 2014), disputes these findings, suggesting that (Risch *et al.* 2012) mistakes natural variations in humpback whale song occurrence for changes caused by OAWRS activity approximately 200 km away. (Risch *et al.,* 2014) responded to (Gong *et al.,* 2014) and highlighted the context-dependent nature of behavioral responses to acoustic stressors.

We considered the McCauley *et al.* (1998) paper (along with McCauley *et al.,* 2000) in the notice of proposed authorization (80 FR 13961, March 17, 2015). Briefly, McCauley *et al.* (1998, 2000) studied the responses of migrating humpback whales off western Australia to a full-scale seismic survey with a 16-airgun array (2,678 in^3) and to playbacks using a single, 20-in^3airgun. Both studies point to a contextual variability in the behavioral responses of marine mammals to sound exposure. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μPa for resting humpback whale pods containing females. In contrast, some individual humpback whales, mainly males, approached within distances of 100 to 400 m (328 to 1,312 ft), where sound levels were 179 dB re: 1 μPa (McCauley *et al.,* 2000). The authors hypothesized that the males gravitated towards the single operating airgun possibly due to its similarity to the sound produced by humpback whales breaching (McCauley *et al.,* 2000). Despite the evidence that some humpback whales exhibited localized avoidance reactions at received levels below 160 dB re: 1 μPa, the authors found no evidence of any gross changes in migration routes, such as inshore/offshore displacement during seismic operations (McCauley *et al.,* 1998, 2000).

With repeated exposure to sound, many marine mammals may habituate to the sound at least partially (Richardson & Wursig, 1997). Bain and Williams (2006) examined the effects of a large airgun array (maximum total discharge volume of 1,100 in^3) on six species in shallow waters off British Columbia and Washington: harbor seal, California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), gray whale (*Eschrichtius robustus*), Dall's porpoise (*Phocoenoides dalli*), and the harbor porpoise. Harbor porpoises showed ''apparent avoidance response'' at received levels less than 145 dB re: 1 μPa at a distance of greater than 70 km (43 miles) from the seismic source (Bain and Williams, 2006). However, the tendency for greater responsiveness by harbor porpoise is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.* 1995; Southall *et al.,* 2007). In contrast, the authors reported that gray whales seemed to tolerate exposures to sound up to approximately 170 dB re: 1 μPa (Bain and Williams, 2006) and Dall's porpoises occupied and tolerated areas receiving exposures of 170–180 dB re: 1 μPa (Bain and Williams, 2006; Parsons *et al.,* 2009). The authors observed several gray whales that moved away from the airguns toward deeper water where sound levels were higher due to propagation effects resulting in higher noise exposures (Bain and Williams, 2006). However, it is unclear whether their movements reflected a response to the sounds (Bain and Williams, 2006). Thus, the authors surmised that the gray whale data (*i.e.,* voluntarily moving to areas where they are exposed to higher sound levels) are ambiguous at best because one expects the species to be the most sensitive to the low-frequency sound emanating from the airguns (Bain and Williams, 2006).

DeRuiter *et al.* (2013) recently observed that beaked whales (considered a particularly sensitive species to sound) exposed to playbacks (*i.e.,* simulated) of U.S. tactical mid-frequency sonar from 89 to 127 dB re: 1 μPa at close distances responded notably by altering their dive patterns. In contrast, individuals showed no behavioral responses when exposed to similar received levels from *actual* U.S. Navy tactical mid-frequency sonar operated at much further distances (DeRuiter *et al.,* 2013). As noted earlier, one must consider the importance of context (for example, the distance of a sound source from the animal) in predicting behavioral responses.

Regarding the public comments submitted by Clark *et al.* (2012) on the Arctic Ocean Draft EIS in reference to our use of the current acoustic exposure

criteria, please refer to our earlier response to comments.

None of these studies on the effects of airgun noise on marine mammals point to any associated mortalities, strandings, or permanent abandonment of habitat by marine mammals. Bain and Williams (2006) specifically conclude that ''. . . although behavioral changes were observed, the precautions utilized in the SHIPS survey did not result in any detectable marine mammal mortalities during the survey, nor were any reported subsequently by the regional marine mammal stranding network . . .'' McCauley *et al.* (2000) concluded that any risk factors associated with their seismic survey ''. . . lasted for a comparatively short period and resulted in only small range displacement . . .'' Further, the total discharge volume of the airgun arrays cited in McCauley *et al.,* 1998, 2000; Bain and Williams, 2006 were generally over 40 percent larger than the 1,400 in^3 array configurations proposed for use during this survey (*e.g.,* 2,768 in^3, McCauley *et al.,* 1998; 6,730 in^3, Bain and Williams, 2006). Thus, Lamont-Doherty's 160-dB threshold radius is not likely to reach the threshold distances reported in these studies.

Comment 18: COA takes issue with our conclusion that Level A harassment take would not occur during the survey. Citing Lucke *et al.* (2009); Thompson *et al.* (1998); Kastak *et al.* (2008); Kujawa and Lieberman (2009); Wood *et al.* (2012); and Cox *et al.* (2006), the commenters assert that our preliminary determinations for Level A harassment take and the likelihood of temporary and or permanent threshold shift do not consider the best available science.

Response: As explained in Table 3 in the notice of proposed authorization (80 FR 13961, March 17, 2015), the predicted distances at which sound levels could result in Level A harassment are relatively small (439 m; 1,440 ft for cetaceans; 118 m; 387 ft for pinnipeds). At those distances, we expect that the required vessel-based visual monitoring of the exclusion zones is effective to implement mitigation measures to prevent Level A harassment.

First, if the protected species observers observe marine mammals approaching the exclusion zone, Lamont-Doherty must shut down or power down seismic operations to ensure that the marine mammal does not approach the applicable exclusion radius. Second, if the observer detects a marine mammal outside the 180- or 190-dB exclusion zones, and the animal—based on its position and the relative motion—is likely to enter the exclusion zone, Lamont-Doherty may alter the vessel's speed and/or course—when practical and safe—in combination with powering down or shutting down the airguns, to minimize the effects of the seismic survey. The avoidance behaviors discussed in the notice of proposed authorization (80 FR 13961, March 17, 2015) supports our expectations that individuals will avoid exposure at higher levels. Also, it is unlikely that animals would encounter repeated exposures at very close distances to the sound source because Lamont-Doherty would implement the required shutdown and power down mitigation measures to ensure that marine mammals do not approach the applicable exclusion zones for Level A harassment. Finally, ramp-up of the airguns is required.

Regarding the Lucke *et al.* (2009) study, the authors found a threshold shift (TS) of a harbor porpoise after exposing it to airgun noise (single pulse) with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re: 1 µPa, which corresponds to a sound exposure level of 164.5 dB re: 1 µPa2 s after integrating exposure. We currently use the root-mean-square (rms) of received SPL at 180 dB and 190 dB re: 1 µPa as the threshold above which permanent threshold shift (PTS) could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly extrapolate the equivalent of rms SPL from the reported peak-to-peak SPLs reported in Lucke *et al.* (2009). However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (Harris *et al.* 2001; McCauley *et al.* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 µPa, and the received levels associated with PTS (Level A harassment) would be higher. This is still above the current 180 dB rms re: 1 µPa threshold for injury. Yet, we recognize that the temporary threshold shift (TTS) of harbor porpoise is lower than other cetacean species empirically tested (Finneran *et al.* 2002; Finneran and Schlundt, 2010; Kastelein *et al.,* 2012). We considered this information in the notice of proposed authorization (80 FR 13961, March 17, 2015).

The Thompson *et al.* (1998) telemetry study on harbor (*Phoca vitulina*) and grey seals (*Halichoerus grypus*) suggested that avoidance and other behavioral reactions by individual seals to small airgun sources may at times be strong, but short-lived. The researchers conducted 1-hour controlled exposure experiments exposing individual seals fitted with telemetry devices to small airguns with a reported source level of 215–224 dB re: 1 µPa (peak-to-peak) (Thompson *et al.,* 1998; Gordon *et al.,* 2003). The researchers measured dive behavior, swim speed heart rate and stomach temperature (indicator for feeding), but they did not measure hearing threshold shift in the animals. The researchers observed startle responses, decreases in heart rate, and temporary cessation of feeding. In six out of eight trials, harbor seals exhibited strong avoidance behaviors, and swam rapidly away from the source (Thompson *et al.,* 1998; Gordon *et al.,* 2003). One seal showed no detectable response to the airguns, approaching within 300 m (984 ft) of the source (Gordon *et al.,* 2003). However, they note that the behavioral responses were short-lived and the seals' behavior returned to normal after the trials (Thompson *et al.,* 1998; Gordon *et al.,* 2003). The study does not discuss temporary threshold shift or permanent threshold shift in harbor seals and the estimated rms SPL for this survey is approximately 200 dB re: 1 µPa, well above NMFS' current 180 dB rms re: 1 µPa threshold for injury for cetaceans and NMFS' current 190 dB rms re: 1 µPa threshold for injury for pinnipeds (accounting for the fact that the rms sound pressure level (in dB) is typically 16 dB less than the peak-to-peak level).

In a study on the effect of non-impulsive sound sources on marine mammal hearing, Kastak *et al.* (2008) exposed one harbor seal to an underwater 4.1 kHz pure tone fatiguing stimulus with a maximum received sound pressure of 184 dB re: 1 µPa for 60 seconds (Kastak *et al.,* 2008; Finneran and Branstetter, 2013). A second 60-second exposure resulted in an estimated threshold shift of greater than 50 dB at a test frequency of 5.8 kHz (Kastak *et al.,* 2008). The seal recovered at a rate of −10 dB per log(min). However, 2 months post-exposure, the researchers observed incomplete recovery from the initial threshold shift resulting in an apparent permanent threshold shift of 7 to 10 dB in the seal (Kastak *et al.,* 2008). We note that seismic sound is an impulsive source, and the context of the study is related to the effect of non-impulsive sounds (*i.e.,* a continuous 6-second exposure) on marine mammals. In contrast, Lamont-Doherty's seismic survey has a short, pulsed, intermittent shot-interval of 5 to 6 seconds every 12.5 m traveled.

We also considered two other Kastak *et al.* (1999, 2005) studies. Kastak *et al.* (1999) reported TTS of approximately

4–5 dB in three species of pinnipeds (harbor seal, California sea lion, and northern elephant seal) after underwater exposure for approximately 20 minutes to sound with frequencies ranging from 100–2,000 Hz at received levels 60–75 dB above hearing threshold. This approach allowed similar effective exposure conditions to each of the subjects, but resulted in variable absolute exposure values depending on subject and test frequency. Recovery to near baseline levels was reported within 24 hours of sound exposure. Kastak *et al.* (2005) followed up on their previous work, exposing the same test subjects to higher levels of sound for longer durations. The animals were exposed to octave-band sound for up to 50 minutes of net exposure. The study reported that the harbor seal experienced TTS of 6 dB after a 25-minute exposure to 2.5 kHz of octave-band sound at 152 dB (183 dB SEL). The California sea lion demonstrated onset of TTS after exposure to 174 dB (206 dB SEL).

We considered that PTS could occur at relatively lower levels, such as at levels that would normally cause TTS, if the animal experiences repeated exposures at very close distances to the sound source. However, an animal would need to stay very close to the sound source for an extended amount of time to incur a serious degree of PTS, which in this case, would be highly unlikely due to the required mitigation measures in place to avoid Level A harassment and the expectation that a mobile marine mammal would generally avoid an area where received sound pulse levels exceed 160 dB re: 1 µPa (rms) (review in Richardson *et al.* 1995; Southall *et al.* 2007).

We also considered recent studies by Kujawa and Liberman (2009) and Lin *et al.* (2011). These studies found that despite completely reversible threshold shifts that leave cochlear sensory cells intact, large threshold shifts could cause synaptic level changes and delayed cochlear nerve degeneration in mice and guinea pigs, respectively. We note that the high level of TTS that led to the synaptic changes shown in these studies is in the range of the high degree of TTS that Southall *et al.* (2007) used to calculate PTS levels. It is not known whether smaller levels of TTS would lead to similar changes. NMFS acknowledges the complexity of noise exposure on the nervous system, and will re-examine this issue as more data become available.

In contrast, a recent study on bottlenose dolphins (Schlundt, *et al.,* 2013) measured hearing thresholds at multiple frequencies to determine the amount of TTS induced before and after exposure to a sequence of impulses produced by a seismic air gun. The airgun volume and operating pressure varied from 40–150 in^3 and 1000–2000 psi, respectively. After three years and 180 sessions, the authors observed no significant TTS at any test frequency, for any combinations of air gun volume, pressure, or proximity to the dolphin during behavioral tests (Schlundt, *et al.,* 2013). Schlundt *et al.* (2013) suggest that the potential for airguns to cause hearing loss in dolphins is lower than previously predicted, perhaps as a result of the low-frequency content of airgun impulses compared to the high-frequency hearing ability of dolphins.

NEPA Concerns

Comment 19: COA states that we should prepare an Environmental Impact Statement (EIS), not an EA, to adequately consider the potentially significant impacts of the proposed Authorization, including the cumulative impacts and consideration of a full range of alternatives.

Response: We prepared an EA to evaluate whether significant environmental impacts may result from the issuance of an Authorization to Lamont-Doherty for the take of marine mammals incidental to conducting their seismic survey in the northwest Atlantic Ocean. After completing the EA, which includes two no action alternatives, we determined that there would not be significant impacts to the human environment related to our issuance of an Authorization and accordingly issued a Finding of No Significant Impact (FONSI). Therefore, this action does not require an EIS.

Comment 20: COA states that our analysis of alternatives in the EA was incomplete because the NSF's EA did not sufficiently evaluate the No Action alternative.

Response: The NEPA and the implementing CEQ regulations (40 CFR parts 1500–1508) require consideration of alternatives to proposed major federal actions and NAO 216–6 provides agency policy and guidance on the consideration of alternatives to our proposed action. An EA must consider all reasonable alternatives, including the No Action Alternative. This provides a baseline analysis against which we can compare the other alternatives.

NMFS' EA titled, ''Issuance of an Incidental Harassment Authorization to Lamont Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Northwest Atlantic Ocean, Summer, 2015,'' addresses the potential environmental impacts of four alternatives, namely:

—Issue the Authorization to Lamont-Doherty for take, by Level B harassment, of marine mammals during the seismic survey, taking into account the prescribed means of take, mitigation measures, and monitoring requirements;

—Not issue an Authorization to Lamont-Doherty in which case we assume that the activities would not proceed; or

—Not issue an Authorization to Lamont-Doherty in which case, for the purposes of NEPA analysis only, we assume that the activities would proceed and cause incidental take without the mitigation and monitoring measures prescribed in the Authorization; or

—Issue the Authorization to Lamont-Doherty for take, by Level B harassment, of marine mammals during the seismic survey by incorporating additional mitigation requirements.

To warrant detailed evaluation as a reasonable alternative, an alternative must meet our purpose and need. In this case, an alternative meets NMFS' purpose and need if it satisfies the requirements under section 101(a)(5)(D) the MMPA. We evaluated each potential alternative against these criteria; identified two action alternatives along with two No Action Alternatives; and carried these forward for evaluation in our EA.

General Comments

Comment 21: Several commenters expressed general opposition or general support for the survey.

Response: We acknowledge their comments and thank them for their interest.

Description of Marine Mammals in the Area of the Specified Activity

Table 2 in this notice provides the following: all marine mammal species with possible or confirmed occurrence in the proposed activity area; information on those species' regulatory status under the MMPA and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); abundance; occurrence and seasonality in the activity area.

TABLE 2—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED SURVEY AREA DURING THE SUMMER (JUNE THROUGH AUGUST) IN 2015

Species	Stock name	Regulatory status [1 2]	Stock/ species abundance [3]	Occurrence and range	Season
North Atlantic right whale (*Eubalaena glacialis*).	Western Atlantic	MMPA—D ESA—EN	456	common coastal/shelf	year-round.[4]
Humpback whale (*Megaptera novaeangliae*).	Gulf of Maine	MMPA—D ESA—EN	823	common coastal	spring–fall.
Common minke whale (*Balaenoptera acutorostrata*).	Canadian East Coast	MMPA—D ESA—NL	20,741	rare coastal/shelf	spring–summer.
Sei whale (*Balaenoptera borealis*)	Nova Scotia	MMPA—D ESA—EN	357	uncommon shelf edge	spring.
Fin whale (*Balaenoptera physalus*)	Western North Atlantic	MMPA—D ESA—EN	1,618	common pelagic	year-round.
Blue whale (*Balaenoptera musculus)*.	Western North Atlantic	MMPA—D ESA—EN	440	uncommon coastal/pelagic	occasional.
Sperm whale (*Physeter macrocephalus*).	Nova Scotia	MMPA—D ESA—EN	2,288	common pelagic	year-round.
Dwarf sperm whale (*Kogia sima*)	Western North Atlantic	MMPA—NC ESA—NL	3,785	uncommon shelf	year-round.
Pygmy sperm whale (*K. breviceps*).	Western North Atlantic	MMPA—NC ESA—NL	3,785	uncommon shelf	year-round.
Cuvier's beaked whale (*Ziphius cavirostris*).	Western North Atlantic	MMPA—NC ESA—NL	6,532	uncommon shelf/pelagic	spring–summer.
Blainville's beaked whale (*Mesoplodon densirostris*).	Western North Atlantic	MMPA—NC ESA—NL	[5] 7,092	uncommon shelf/pelagic	spring–summer.
Gervais' beaked whale (*M. europaeus*).	Western North Atlantic	MMPA—NC ESA—NL	[5] 7,092	uncommon shelf/pelagic	spring–summer.
Sowerby's beaked whale (*M. bidens*).	Western North Atlantic	MMPA—NC ESA—NL	[5] 7,092	uncommon shelf/pelagic	spring–summer.
True's beaked whale (*M. mirus*)	Western North Atlantic	MMPA—NC ESA—NL	[5] 7,092	uncommon shelf/pelagic	spring–summer.
Northern bottlenose whale (*Hyperoodon ampullatus*).	Western North Atlantic	MMPA—NC ESA—NL	unknown	rare pelagic	unknown.
Rough-toothed dolphin (*Steno bredanensis*).	Western North Atlantic	MMPA—NC ESA—NL	271	rare pelagic	summer.
Bottlenose dolphin (*Tursiops truncatus*).	Western North Atlantic Offshore.	MMPA—NC ESA—NL	77,532	common pelagic	spring–summer.
	Western North Atlantic Northern Migratory Coastal.	MMPA—D ESA—NL	[6] 11,548	uncommon coastal within the 25-m isobath and estuaries.	summer.
Pantropical spotted dolphin (*Stenella attenuata*).	Western North Atlantic	MMPA—NC ESA—NL	3,333	rare pelagic	summer–fall.
Atlantic spotted dolphin (*S. frontalis*).	Western North Atlantic	MMPA—NC ESA—NL	44,715	common coastal	summer–fall.
Spinner dolphin (*S. longirostris*)	Western North Atlantic	MMPA—NC ESA—NL	unknown	rare pelagic	unknown.
Striped dolphin (*S. coeruleoalba*)	Western North Atlantic	MMPA—NC ESA—NL	54,807	uncommon shelf	summer.
Short-beaked common dolphin (*Delphinus delphis*).	Western North Atlantic	MMPA—NC ESA—NL	173,486	common shelf/pelagic	summer–fall.
White-beaked dolphin (*Lagenorhynchus albirostris*).	Western North Atlantic	MMPA—NC ESA—NL	2,003	rare coastal/shelf	summer.
Atlantic white-sided-dolphin (*L. acutus*).	Western North Atlantic	MMPA—NC ESA—NL	48,819	uncommon shelf/slope	summer–winter.
Clymene dolphin (*Stenella clymene*).	Western North Atlantic	MMPA—NC ESA—NL	[7] 6,086	rare slope	summer.
Fraser's dolphin (*Lagenodelphis hosei*).	Western North Atlantic	MMPA—NC ESA—NL	[8] 726	Pelagic	Rare.
Risso's dolphin (*Grampus griseus*)	Western North Atlantic	MMPA—NC ESA—NL	18,250	common shelf/slope	year-round.
Melon-headed whale (*Peponocephala electra*).	Western North Atlantic	MMPA—NC ESA—NL	[9] 2,283	Pelagic	Rare.
False killer whale (*Pseudorca crassidens*).	Western North Atlantic	MMPA—NC ESA—NL	442	rare pelagic	spring–summer.
Pygmy killer whale (*Feresa attenuate*).	Western North Atlantic	MMPA—NC ESA—NL	[10] 1,108	Pelagic	unknown.
Killer whale (*Orcinus orca*)	Western North Atlantic	MMPA—NC ESA—NL	[11] 28	Coastal	unknown.
Long-finned pilot whale (*Globicephala melas*).	Western North Atlantic	MMPA—NC ESA—NL	26,535	uncommon shelf/pelagic	summer.
Short-finned pilot whale (*G. macrorhynchus*).	Western North Atlantic	MMPA—NC ESA—NL	21,515	uncommon shelf/pelagic	summer.

TABLE 2—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED SURVEY AREA DURING THE SUMMER (JUNE THROUGH AUGUST) IN 2015—Continued

Species	Stock name	Regulatory status [1] [2]	Stock/ species abundance [3]	Occurrence and range	Season
Harbor porpoise (*Phocoena phocoena*).	Gulf of Maine/B Bay of Fundy.	MMPA—NC ESA—NL	79,883	common coastal	year-round.
Gray seal (*Halichoerus grypus*)	Western North Atlantic	MMPA—NC ESA—NL	331,000	common coastal	fall–spring.
Harbor seal (*Phoca vitulina*)	Western North Atlantic	MMPA—NC ESA—NL	75,834	common coastal	fall–spring.
Harp seal (*Pagophilus groenlandicus*).	Western North Atlantic	MMPA—NC ESA—NL	8,600,000	rare pack ice	Jan–May.

[1] MMPA: D = Depleted, S = Strategic, NC = Not Classified.
[2] ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[3] NOAA Technical Memorandum NMFS–NE–228, U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—2013 (Waring *et al.,* 2014) and the Draft 2014 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (*in review,* 2014).
[4] Seasonality based on Whitt *et al.,* 2013.
[5] Undifferentiated beaked whales abundance estimate (Waring *et al.,* 2014).
[6] During summer months, the primary habitat of the western north Atlantic, Northern Migratory Coastal Stock of bottlenose dolphins is primarily in waters less than 20 m deep within the 25-m isobath, including estuarine and inshore waters (Waring et al., 2014; Kenney 1990). Toth *et al.* (2012) suggested a portioning of the Northern Migratory Coastal Stock in waters off of New Jersey. They identified two clusters, one cluster inhabiting waters 0–1.9 km from the shore and a second cluster inhabiting waters 1.9 to 6 km from shore.
[7] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 6,086 (CV=0.93) (Mullin and Fulling, 2003).
[8] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 726 (CV=0.70) for the Gulf of Mexico stock (Mullin and Fulling, 2004).
[9] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 2,283 (CV=0.76) for the Gulf of Mexico stock (Mullin, 2007).
[10] There is no abundance information for this species in the Atlantic. Abundance estimate derived from the Northern Gulf of Mexico stock = 152 (Mullin, 2007) and the Hawaii stock = 956 (Barlow, 2006).
[11] There is no abundance information for this species in the Atlantic. Abundance estimate derived from the Northern Gulf of Mexico stock = 28 (Waring *et al.,* 2014).

Potential Effects of the Specified Activities on Marine Mammals

We provided a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.,* seismic airgun operations, vessel movement, and entanglement) impact marine mammals (via observations or scientific studies) in the notice of proposed Authorization (80 FR 13961, March 17, 2015).

The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative discussion of the number of marine mammals anticipated to be taken by this activity. The ''Negligible Impact Analysis'' section will include a discussion of how this specific activity will impact marine mammals. The Negligible Impact analysis considers the anticipated level of take and the effectiveness of mitigation measures to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Operating active acoustic sources, such as airgun arrays, has the potential for adverse effects on marine mammals. The majority of anticipated impacts would be from the use of acoustic sources. The effects of sounds from airgun pulses might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.,* 1995). However, for reasons discussed in the proposed Authorization, it is very unlikely that there would be any cases of temporary or permanent hearing impairment resulting from Lamont-Doherty's activities. As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.,* 1995).

In the ''Potential Effects of the Specified Activity on Marine Mammals'' section of the notice of proposed Authorization (80 FR 13961, March 17, 2015), we included a qualitative discussion of the different ways that Lamont-Doherty's seismic survey may potentially affect marine mammals. Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations. For the airgun sound generated from Lamont-Doherty's seismic survey, sound will consist of low frequency (under 500 Hz) pulses with extremely short durations (less than one second). Masking from airguns is more likely in low-frequency marine

mammals like mysticetes. There is little concern that masking would occur near the sound source due to the brief duration of these pulses and relative silence between air gun shots (approximately 5 to 6 seconds). Masking is less likely for mid- to high-frequency cetaceans and pinnipeds.

Hearing impairment (either temporary or permanent) is also unlikely. Given the higher level of sound necessary to cause permanent threshold shift as compared with temporary threshold shift, it is considerably less likely that permanent threshold shift would occur during the seismic survey. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns.

The *Langseth* will operate at a relatively slow speed (typically 4.6 knots [8.5 km/h; 5.3 mph]) when conducting the survey. Protected species observers would monitor for marine mammals, which would trigger mitigation measures, including vessel avoidance where safe. Therefore, NMFS does not anticipate nor do we authorize takes of marine mammals from vessel strike.

NMFS refers the reader to Lamont-Doherty's application, our EA, and the NSF's amended EA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels. We have reviewed these data along with new information submitted during the public comment period and based our decision on the relevant information.

Anticipated Effects on Marine Mammal Habitat

NMFS included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine mammal prey items (*e.g.,* fish and invertebrates) in the notice of proposed Authorization (80 FR 13961, March 17, 2015). While we anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, the impact to habitat is temporary and reversible. Further, we also considered these impacts to marine mammals in detail in the notice of proposed Authorization as behavioral modification. The main impact associated with the activity would be temporarily elevated noise levels and the associated direct effects on marine mammals.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Lamont-Doherty reviewed the following source documents and incorporated a suite of proposed mitigation measures into their project description:

(1) Protocols used during previous NSF-funded seismic research cruises as approved by us and detailed in the NSF's 2011 PEIS and 2014 amended EA;

(2) Previous incidental harassment authorization applications and authorizations that we have approved and authorized; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

Lamont-Doherty proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;

(2) Proposed exclusion zones;

(3) Power down procedures;

(4) Shutdown procedures;

(5) Ramp-up procedures; and

(6) Speed and course alterations.

Vessel-Based Visual Mitigation Monitoring

Lamont-Doherty would position observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. Observers would also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shutdown (*i.e.,* greater than approximately eight minutes for this proposed cruise). When feasible, the observers would conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on the observations, the *Langseth* would power down or shutdown the airguns when marine mammals are observed within or about to enter a designated exclusion zone for cetaceans or pinnipeds.

During seismic operations, at least four protected species observers would be aboard the *Langseth.* Lamont-Doherty would appoint the observers with NMFS concurrence and they would conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two observers would be on duty from the observation tower to monitor marine mammals near the seismic vessel. Using two observers would increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two observers on effort, but at least one observer would be on watch during bathroom breaks and mealtimes. Observers would be on duty in shifts of no longer than four hours in duration.

Two observers on the *Langseth* would also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third observer would monitor the passive acoustic monitoring equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two observers (visual) on duty from the observation tower, and an observer (acoustic) on the passive acoustic monitoring system. Before the start of the seismic survey, Lamont-Doherty would instruct the vessel's crew to assist in detecting marine mammals and implementing mitigation requirements.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level would be approximately 21.5 m (70.5 ft) above sea level, and the observer would have a good view around the entire vessel. During daytime, the observers would scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices would be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) would be available to assist with distance estimation. They are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. The user measures distances to animals with the reticles in the binoculars.

Lamont-Doherty would immediately power down or shutdown the airguns when observers see marine mammals within or about to enter the designated exclusion zone. The observer(s) would

continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations would not resume until the observer has confirmed that the animal has left the zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Mitigation Exclusion Zones

Lamont-Doherty would use safety radii to designate exclusion zones and to estimate take for marine mammals. Table 3 shows the distances at which one would expect to receive sound levels (160-, 180-, and 190-dB,) from the airgun subarrays and a single airgun. If the protected species visual observer detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew would immediately power down the airgun array, or perform a shutdown if necessary (see Shut-down Procedures).

TABLE 3—DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 re: 1 μPa COULD BE RECEIVED DURING THE PROPOSED SURVEY OFFSHORE NEW JERSEY IN THE NORTH ATLANTIC OCEAN, JUNE THROUGH AUGUST, 2015

Source and volume (in^3)	Tow depth (m)	Water depth (m)	Predicted RMS distances (m) [1]		
			190 dB [2]	180 dB	160 dB
Single Bolt airgun (40 in^3)	6	<100	21	73	995
4-Airgun subarray (700 in^3)	4.5	<100	101	378	5,240
4-Airgun subarray (700 in^3)	6	<100	118	439	6,100

[1] Predicted distances for 160 dB based on information in Table 1 of the NSF's application.

[2] Lamont-Doherty did not request take for pinniped species in their application and consequently did not include distances for the 190-dB isopleth for pinnipeds in Table 1 of their application. Because NMFS anticipates that pinnipeds have the potential to occur in the survey area, Lamont-Doherty calculated the distances for the 190-dB isopleth and submitted them to NMFS on for inclusion in this table.

The 180- or 190-dB level shutdown criteria are applicable to cetaceans and pinnipeds as specified by NMFS (2000).

Power Down Procedures

A power down involves decreasing the number of airguns in use such that the radius of the 180-dB or 190-dB exclusion zone is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, the *Langseth* would operate one airgun (40 in^3). The continued operation of one airgun would alert marine mammals to the presence of the seismic vessel in the area. A shutdown occurs when the *Langseth* suspends all airgun activity.

If the observer detects a marine mammal outside the exclusion zone and the animal is likely to enter the zone, the crew would power down the airguns to reduce the size of the 180-dB or 190-dB exclusion zone before the animal enters that zone. Likewise, if a mammal is already within the zone after detection, the crew would power-down the airguns immediately. During a power down of the airgun array, the crew would operate a single 40-in^3 airgun which has a smaller exclusion zone. If the observer detects a marine mammal within or near the smaller exclusion zone around the airgun (Table 3), the crew would shut down the single airgun (see next section).

Resuming Airgun Operations After a Power Down: Following a power-down, the *Langseth* crew would not resume full airgun activity until the marine mammal has cleared the 180-dB or 190-dB exclusion zone. The observers would consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone; or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (*i.e.,* small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (*i.e.,* mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or

The *Langseth* crew would resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (*i.e.,* small odontocetes or pinnipeds). Likewise, the crew would resume airgun operations at full power after 30 minutes of sighting any species with longer dive durations (*i.e.,* mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

NMFS estimates that the *Langseth* would transit outside the original 180-dB or 190-dB exclusion zone after an 8-minute wait period. This period is based on the average speed of the *Langseth* while operating the airguns (8.5 km/h; 5.3 mph). Because the vessel has transited away from the vicinity of the original sighting during the 8-minute period, implementing ramp-up procedures for the full array after an extended power down (*i.e.,* transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The *Langseth's* observers are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. In general, observers can observe to the horizon (10 km; 6.2 mi) from the height of the *Langseth's* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within the relevant exclusion zone distance before resuming airgun operations at full power.

Shutdown Procedures

The *Langseth* crew would shut down the operating airgun(s) if they see a marine mammal within or approaching the exclusion zone for the single airgun. The crew would implement a shutdown:

(1) If an animal enters the exclusion zone of the single airgun after the crew has initiated a power down; or

(2) If an observer sees the animal is initially within the exclusion zone of the single airgun when more than one airgun (typically the full airgun array) is operating.

Resuming Airgun Operations after a Shutdown: Following a shutdown in excess of eight minutes, the *Langseth* crew would initiate a ramp-up with the

smallest airgun in the array (40-in^3). The crew would turn on additional airguns in a sequence such that the source level of the array would increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the observers would monitor the exclusion zone, and if he/she sees a marine mammal, the *Langseth* crew would implement a power down or shutdown as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew would need to temporarily shut down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew would follow ramp-up procedures for a shutdown described earlier and the observers would monitor the full exclusion zone and would implement a power down or shutdown if necessary.

If the full exclusion zone is not visible to the observer for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew would not commence ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew would not ramp up the airgun array from a complete shutdown at night or in thick fog, because the outer part of the zone for that array would not be visible during those conditions.

If one airgun has operated during a power down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew would not initiate a ramp-up of the airguns if an observer sees the marine mammal within or near the applicable exclusion zones during the day or close to the vessel at night.

Ramp-Up Procedures

Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns, and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. Lamont-Doherty would follow a ramp-up procedure when the airgun array begins operating after an 8 minute period without airgun operations or when shut down has exceeded that period. Lamont-Doherty has used similar waiting periods (approximately eight to 10 minutes) during previous seismic surveys.

Ramp-up would begin with the smallest airgun in the array (40 in^3). The crew would add airguns in a sequence such that the source level of the array would increase in steps not exceeding six dB per five minute period over a total duration of approximately 30 to 35 minutes. During ramp-up, the observers would monitor the exclusion zone, and if marine mammals are sighted, Lamont-Doherty would implement a power-down or shut-down as though the full airgun array were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, Lamont-Doherty would not commence the ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the crew would not ramp up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array would not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. Lamont-Doherty would not initiate a ramp-up of the airguns if an observer sights a marine mammal within or near the applicable exclusion zones.

Special Procedures for Situations or Species of Concern

Considering the highly endangered status of North Atlantic right whales, the *Langseth* crew would shut down the airgun(s) immediately in the unlikely event that observers detect this species, regardless of the distance from the vessel. The *Langseth* would only begin ramp-up if observers have not seen the North Atlantic right whale for 30 minutes.

The *Langseth* would avoid exposing concentrations of humpback, sei, fin, blue, and/or sperm whales to sounds greater than 160 dB and would power down the array, if necessary. For purposes of this planned survey, a concentration or group of whales will consist of six or more individuals visually sighted that do not appear to be traveling (*e.g.,* feeding, socializing, etc.).

Speed and Course Alterations

If during seismic data collection, Lamont-Doherty detects marine mammals outside the exclusion zone and, based on the animal's position and direction of travel, is likely to enter the exclusion zone, the *Langseth* would change speed and/or direction if this does not compromise operational safety. Due to the limited maneuverability of the primary survey vessel, altering speed, and/or course can result in an extended period of time to realign onto the transect. However, if the animal(s) appear likely to enter the exclusion zone, the *Langseth* would undertake further mitigation actions, including a power down or shut down of the airguns.

Mitigation Conclusions

NMFS has carefully evaluated Lamont-Doherty's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of Lamont-Doherty's proposed measures, as well as other measures proposed by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring

In order to issue an Incidental Take Authorization for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for Authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that we expect to be present in the proposed action area.

Lamont-Doherty submitted a marine mammal monitoring plan in section XIII of the Authorization application. NMFS, the NSF, or Lamont-Doherty may modify or supplement the plan based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and during other times and locations, in order to generate more data to contribute to the analyses mentioned later;

2. An increase in our understanding of how many marine mammals would be affected by seismic airguns and other active acoustic sources and the likelihood of associating those exposures with specific adverse effects, such as behavioral harassment, temporary or permanent threshold shift;

3. An increase in our understanding of how marine mammals respond to stimuli that we expect to result in take and how those anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (*i.e.,* to be able to accurately predict received level, distance from source, and other pertinent information);

b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (*i.e.,* to be able to accurately predict received level, distance from source, and other pertinent information);

c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

Lamont-Doherty will sponsor marine mammal monitoring during the present project to supplement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the Authorization. Lamont-Doherty planned the monitoring work as a self-contained project independent of any other related monitoring projects that may occur in the same regions at the same time. Further, Lamont-Doherty is prepared to discuss coordination of its monitoring program with any other related work that might be conducted by other groups working insofar as it is practical for Lamont-Doherty.

Vessel-Based Passive Acoustic Monitoring

Passive acoustic monitoring would complement the visual mitigation monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Passive acoustical monitoring can improve detection, identification, and localization of cetaceans when used in conjunction with visual observations. The passive acoustic monitoring would serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The acoustic observer would monitor the system in real time so that he/she can advise the visual observers if they acoustically detect cetaceans.

The passive acoustic monitoring system consists of hardware (*i.e.,* hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge, attached to the free end of the cable, which is typically towed at depths less than 20 m (65.6 ft). The *Langseth* crew would deploy the array from a winch located on the back deck. A deck cable would connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system would be located. The Pamguard software amplifies, digitizes, and then processes the acoustic signals received by the hydrophones. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

One acoustic observer, an expert bioacoustician with primary responsibility for the passive acoustic monitoring system would be aboard the *Langseth* in addition to the four visual observers. The acoustic observer would monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, passive acoustic monitoring may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary passive acoustic monitoring streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One acoustic observer would monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency

ranges produced by cetaceans. The observer monitoring the acoustical data would be on shift for one to six hours at a time. The other observers would rotate as an acoustic observer, although the expert acoustician would be on passive acoustic monitoring duty more frequently.

When the acoustic observer detects a vocalization while visual observations are in progress, the acoustic observer on duty would contact the visual observer immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), so that the vessel's crew can initiate a power down or shutdown, if required. The observer would enter the information regarding the call into a database. Data entry would include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (*e.g.,* unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.,* clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. Acousticians record the acoustic detection for further analysis.

Observer Data and Documentation

Observers would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. They would use the data to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the exclusion zone.

When an observer makes a sighting, they will record the following information:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, *etc.*), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The observer will record the data listed under (2) at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Observers will record all observations and power downs or shutdowns in a standardized format and will enter data into an electronic database. The observers will verify the accuracy of the data entry by computerized data validity checks during data entry and by subsequent manual checking of the database. These procedures will allow the preparation of initial summaries of data during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shutdown).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which Lamont-Doherty must report to the Office of Protected Resources.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where Lamont-Doherty would conduct the seismic study.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals detected during non-active and active seismic operations.

Reporting

Lamont-Doherty would submit a report to us and to the NSF within 90 days after the end of the cruise. The report would describe the operations conducted and sightings of marine mammals and turtles near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Lamont-Doherty shall immediately cease the specified activities and immediately report the take to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Greater Atlantic Regional Stranding Coordinator at (978) 281–9300. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Lamont-Doherty shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with Lamont-Doherty to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Lamont-Doherty may not resume their activities until notified by us via letter, email, or telephone.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as we describe in the next paragraph), Lamont-Doherty will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Greater Atlantic Regional Stranding Coordinator at (978) 281–9300. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with Lamont-Doherty to determine whether modifications in the activities are appropriate.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Lamont-Doherty would report the incident to the Chief, Permits and Conservation Division,

Office of Protected Resources, NMFS, at 301–427–8401 and the Greater Atlantic Regional Stranding Coordinator at (978) 281–9300, within 24 hours of the discovery. Lamont-Doherty would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

In the notice of proposed Authorization, NMFS explained the impacts and parts of the seismic survey that were likely to result in take (*i.e.,* the acoustic stressors), as well as those that were not, and further indicated the acoustic thresholds that would be used in the take calculations. This information remains unchanged. However, NMFS received valuable input from the Commission during the public comment period recommending that we modify our method of estimating take to better incorporate the duration of the survey. We agree with the Commission's recommendations and have modified our survey methods to incorporate duration for the majority of species and also included species-specific modifications for a few species with unique circumstances that support the use of a different method to quantify take.

The following sections describe NMFS' methods to estimate take by incidental harassment. We have based these estimates on the number of marine mammals that could be harassed by seismic operations with the airgun sub-array during approximately 4,906 km of transect lines in the northwest Atlantic Ocean as depicted in Figure 1 (Figure 1 of Lamont-Doherty's application).

NMFS' Density Estimates: For the Authorization, NMFS reviewed Lamont-Doherty's take estimates presented in Table 3 of their application and revised the density estimates (where available) as well as the take calculations for several species based upon the best available density information from the SERDP SDSS Marine Animal Model Mapper tool for the summer months (DoN, 2007; accessed on February 10, 2015).

For species where ; mean group size information from CETAP (1982) and the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, and 2013.

NMFS' Take Estimates: In order to estimate the potential number of instances that marine mammals would be exposed to airgun sounds above the 160-dB Level B harassment threshold (*i.e.,* taken), NMFS used the following approach for a majority of the species:

(1) Calculate the total area (not including contingency or overlap) that the *Langseth* would ensonify above the 160-dB Level B harassment threshold within a 24-hour period which includes some within day overlap (*i.e.,* a daily ensonified area of 1,226 km^2 [473 square miles (mi^2)] based on the *Langseth* traveling 200 km [124 mi] in one day);

(2) Multiply the daily ensonified area by each species-specific density (when available) to derive the expected number of instance of exposures to received levels greater than or equal to 160 dB re: 1 μPa on a given day; and

(3) Multiply the product (*i.e.,* the expected number of instance of exposures within a day) by the number of survey days that includes a 25 percent contingency (*i.e.,* a total of 38 days).

Table 5 presents the revised estimates of the possible numbers of instances that marine mammals would be exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed seismic survey. In many cases, this estimate of instances of take is likely an overestimate of the number of *individuals* that are taken, because it assumes 100 percent turnover in the area every day, (*i.e.,* that each new day results in takes of entirely new individuals with no repeat takes of the same individuals over the 30-day period). However, it is difficult to quantify what degree of an overestimate of individuals it might be. Except as described later for a few specific species, this number of instances is used as the estimate of individuals (and authorized take) even though we know it is high.

TABLE 5—DENSITIES, MEAN GROUP SIZE, AND ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS AND POPULATION PERCENTAGES EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB re: 1 μPa OVER 30 DAYS DURING THE PROPOSED SEISMIC SURVEY IN THE NORTH ATLANTIC OCEAN, SUMMER 2015

Species	Density estimate [1]	Modeled number of instances of exposures to sound levels ≥160 dB [2]	Authorized take [3]	Percent of species or stock [4]	Population trend [5]
Blue whale	0	0	1	0.23	Unknown.
Fin whale	0.014	0.65	3	0.23	Unknown.
Humpback whale	0	0	3	0.36	Increasing.
Minke whale	0	0	2	0.01	Unknown.
North Atlantic right whale	0	0	[6] 3	0.65	Increasing.
Sei whale	0.74	34.48	[7] 5	1.40	Unknown.
Sperm whale	17.07	795.26	[7] 31	1.35	Unknown.
Dwarf sperm whale	0.004	0.19	2	0.06	Unknown.
Pygmy sperm whale	0.004	0.19	2	0.06	Unknown.
Cuvier's beaked whale	0.57	26.56	3	0.45	Unknown.
Gervais' beaked whale	0.57	26.56	4	0.43	Unknown.
Sowerby's beaked whale	0.57	26.56	3	0.42	Unknown.
True's beaked whale	0.57	26.56	3	0.42	Unknown.
Blainville beaked whale	0.57	26.56	3	0.42	Unknown.
Bottlenose dolphin	269	12,532.17	12,532	16.16	Unknown.
Pantropical spotted dolphin	0	0	6	0.18	Unknown.
Atlantic spotted dolphin	87.3	4,067.13	4,067	18.19	Unknown.
Striped dolphin	0	0	52	0.09	Unknown.

TABLE 5—DENSITIES, MEAN GROUP SIZE, AND ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS AND POPULATION PERCENTAGES EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB re: 1 μPa OVER 30 DAYS DURING THE PROPOSED SEISMIC SURVEY IN THE NORTH ATLANTIC OCEAN, SUMMER 2015—Continued

Species	Density estimate [1]	Modeled number of instances of exposures to sound levels ≥160 dB [2]	Authorized take [3]	Percent of species or stock [4]	Population trend [5]
Short-beaked common dolphin	0	0	36	0.02	Unknown.
White-beaked dolphin	0	0	16	0.80	Unknown.
Atlantic white-sided dolphin	0	0	53	0.11	Unknown.
Risso's dolphin	32.88	1,531.81	1,532	16.79	Unknown.
Clymene dolphin	0	0	27	0.44	Unknown.
False killer whale	0	0	7	1.58	Unknown.
Pygmy killer whale	0	0	2	1.32	Unknown.
Killer whale	0	0	7	1.86	Unknown.
Long-finned pilot whale	0.444	20.69	21	0.16	Unknown.
Short-finned pilot whale	0.444	20.69	21	0.19	Unknown.
Harbor porpoise	0	0	4	0.005	Unknown.
Gray seal	0	0	2	0.001	Increasing.
Harbor seal	0	0	2	0.003	Unknown.
Harp seal	0	0	2	0.00003	Increasing.

[1] Except where noted, densities are the mean values for the survey area calculated from the SERDP SDSS NODES summer model expressed as number of individuals per 1,000 km^2 (Read *et al.,* 2009).

[2] The modeled number of instances of exposures to sound levels ≥160 dB re: 1 μPa is the product of the species density (where available), the daily ensonified area of 1,226 km^2, and the number of survey days (30 plus 25 percent contingency for a total of 38 days).

[3] Take estimate includes adjustments for species with no density information or where the SERDP SDSS NODES summer model (DoN, 2007; accessed on February 10, 2015) produced a density estimate of less than 1, NMFS increased the take estimates based on sighting information and mean group size from the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, and 2013.

[4 5] Table 2 in this notice lists the stock species abundance estimates used in calculating the percentage of species/stock. Population trend information from Waring *et al.,* 2014. Unknown = Insufficient data to determine population trend.

[6] For North Atlantic right whales, NMFS increased the estimated mean group size of one whale (based on CeTAP (1982) and AMAPPS (2010, 2011, and 2013) survey data) to three whales account for cow/calf pairs based on information from Whitt *et al.* (2013).

[7] For sei and sperm whales, the result of the total number of instances of exposures for the duration of the survey would likely overestimate the take estimates because of sei and sperm whale movement patterns and habitat preferences. NMFS adjusted the authorized incidental take based on the mean number of individuals sighted during the 2010, 2011, and 2013 AMAPPS summer surveys (northern and southern legs). These surveys also included fine scale-surveys of NJ waters.

Take Estimates for Species with One Instance of Exposure or Less: Using the approach described earlier, the model generated instances of take for some species that were less than or equal to one over the 38-day duration. Those species include the fin whale (0.65), and the dwarf and pygmy sperm whale (0.18). NMFS based the take estimates to 3 and 2, respectively on sighting information and mean group size from CETAP (1982) and the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, and 2013.

Take Estimates for Species with No Density Information in SERDP–SDSS: For those species of marine mammals where density estimates were not available in the SERDP SDSS Marine Animal Model Mapper tool for the summer months (DoN, 2007) dataset because of their limited or rare occurrence in the survey area, we used additional data based on sighting information and mean group size from CETAP (1982) and the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, and 2013 to estimate take. Those species include the following: North Atlantic Right, humpback, minke, and blue whales; pantropical spotted, striped, short-beaked common, white-beaked, Atlantic white-sided, and Clymene dolphin; pygmy, false killer, and killer whales; harbor porpoise; and gray, harbor, and harp seals.

For North Atlantic Right whales, NMFS increased the take estimate from zero to three based on a more reasonable group size estimate based on CETAP (1982) and AMAPPS (2010, 2011, and 2013) survey data as well as additional supporting information from Whitt *et al.* (2013) which reported on the occurrence of cow-calf pair in nearshore waters off New Jersey.

NMFS assumed that Lamont-Doherty could potentially encounter one group of each species during the seismic survey. NMFS believes it is reasonable to use the average (mean) groups size (weighted by effort and rounded up) to estimate the take from these potential encounters. Because we believe it is unlikely, we do not think it is necessary to assume that Lamont-Doherty would encounter the largest group size.

Take Estimates for Sei and Sperm Whales: For sei and sperm whales, the result of the total number of instances of exposures for the duration of the survey would be 34.48 and 795.26, respectively. However, equating this number with the take of individuals would likely overestimate the numbers for these species even more than for others because of their known habitat use.

Sei and sperm whale known movement patterns, habitat preferences, and survey data suggest that significantly fewer individuals would be exposed than the instances model estimates. NMFS adjusted the take estimate based on the following factors:

—There are rare sightings of sei whales in the proposed survey area based on NMFS-sponsored aerial or vessel based transect surveys conducted during the summer.

—Sei whales are often associated with deeper waters and areas along continental shelf edges (Hain *et al.* 1985). However, studies note that sei whale may disrupt this general offshore pattern during occasional incursions into shallower inshore waters (Waring *et al.,* 2014).

—Individual sei whales are capable of using large sections of the North Atlantic Ocean for seasonal migration and feeding. Sei whales have the capacity to move large distances in

short periods of time (Olsen *et al.,* 2009).

—Sperm whales have a strong preference for waters deeper than 1,000 m (Reeves and Whitehead, 1997). It is not reasonable to expect that over 700 sperm whales would occur in the survey area which is on the shelf in reasonably flat and shallow bottom topography.

—While deep water is their typical habitat, sperm whales rarely inhabit waters less than 300 m in depth (Clarke, 1956).

—Sperm whales have occurred near Long Island, NY, in water between 40–55 m deep (Scott and Sadove, 1997). When found relatively close to shore, sperm whale presence is usually associated with sharp increases in topography where upwelling occurs and biological production is high, implying the presence of a good food supply (Clarke, 1956). Such areas include oceanic islands and along the outer continental shelf.

In consideration of this and other information, NMFS is authorizing incidental take for five sei and 31 sperm whales based on the mean number of individuals reported by experienced teams of marine mammal observers (vessel and aerial based) during the 2010, 2011, and 2013 AMAPPS summer surveys (northern and southern legs).

The AMAPPS surveys are a robust dataset of marine mammal sightings (also corrected for detectability [g(0)] of marine mammals in the survey area) which includes fine scale-surveys of New Jersey waters. The summer surveys were of similar duration to Lamont-Doherty's survey (approximately 12 to 41 days) and provide the best available information comparable to the duration of NSF's survey.

Encouraging and Coordinating Research

Lamont-Doherty would coordinate the planned marine mammal monitoring program associated with the seismic survey in the northwest Atlantic Ocean with applicable U.S. agencies.

Analysis and Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

In making a negligible impact determination, NMFS considers:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment; and
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

To avoid repetition, our analysis applies to all the species listed in Table 5, given that the anticipated effects of the seismic airguns are expected to be similar in nature, and there is no information about the size, status, or structure of any species or stock that would lead to a different analysis. In some cases we add species-specific factors.

For reasons stated previously in this document and based on the following factors, Lamont-Doherty's specified activities are not likely to cause long-term behavioral disturbance, permanent threshold shift, or other non-auditory injury, serious injury, or death. They include:

- The anticipated impacts of Lamont-Doherty's survey activities on marine mammals are temporary behavioral changes due to avoidance of the area.
- The likelihood that marine mammals approaching the survey area will be traveling through the area or opportunistically foraging within the vicinity, as no breeding, calving, pupping, or nursing areas, or haul-outs, overlap with the survey area.
- The low potential of the survey to have an effect on coastal bottlenose dolphin populations due to the fact that Lamont-Doherty's study area is approximately 20 km (12 mi) away from the identified habitats for coastal bottlenose dolphins and their calves.
- The low likelihood that North Atlantic right whales would be exposed to sound levels greater than or equal to 160 dB re: 1 μPa due to the requirement that the *Langseth* crew must shutdown the airgun(s) immediately if observers detect this species, at any distance from the vessel.
- The likelihood that, given sufficient notice through relatively slow ship speed, NMFS expects marine mammals to move away from a noise source that is annoying prior to its becoming potentially injurious;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the operation of the airgun(s) to avoid acoustic harassment;
- NMFS also expects that the seismic survey would have no more than a temporary and minimal adverse effect on any fish or invertebrate species that serve as prey species for marine mammals, and therefore consider the potential impacts to marine mammal habitat minimal;
- The relatively low potential for temporary or permanent hearing impairment and the likelihood that Lamont-Doherty would avoid this impact through the incorporation of the required monitoring and mitigation measures; and
- The high likelihood that trained visual protected species observers would detect marine mammals at close proximity to the vessel.

NMFS does not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Lamont-Doherty's proposed activities, and NMFS does not authorize injury, serious injury, or mortality. We anticipate only behavioral disturbance to occur primarily in the form of avoidance behavior to the sound source during the conduct of the survey activities.

Table 5 in this document outlines the number of requested Level B harassment takes that we anticipate as a result of these activities. NMFS anticipates that 32 marine mammal species could occur in the proposed action area. Of the marine mammal species under our jurisdiction that are known to occur or likely to occur in the study area, six of these species are listed as endangered under the ESA and depleted under the MMPA, including: The blue, fin, humpback, north Atlantic right, sei, and sperm whales.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.,* 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While NMFS anticipates that the seismic operations would occur on consecutive days, the estimated duration of the survey would last no more than 30 days but would increase sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than a day.

In summary, NMFS expects marine mammals to avoid the survey area, thereby reducing the risk of higher exposure and related impacts. We do not anticipate disruption to reproductive behavior and there is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Due to the nature, degree, instances, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), NMFS does not expect the activity to impact annual rates of recruitment or survival for any affected species or stock. The seismic survey would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat, including the identified habitats for coastal bottlenose dolphins and their calves.

Based on the analysis herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that Lamont-Doherty's proposed seismic survey would have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that Lamont-Doherty's activities could potentially affect, by Level B harassment only, 32 species of marine mammals under our jurisdiction. For each species, these take estimates are small numbers relative to the population sizes: Less than 19 percent of the regional populations estimates of Atlantic spotted dolphins, less than 17 percent of Risso's and bottlenose dolphins; and under 2 percent for all other species and stocks. We have provided the regional population and take estimates for the marine mammal species that may be taken by Level B harassment in Tables 2 and Table 5 in this notice.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are six marine mammal species listed as endangered under the Endangered Species Act that may occur in the proposed survey area: The blue, fin, humpback, North Atlantic right, sei, and sperm whales. Under section 7 of the ESA, the NSF has initiated formal consultation with NMFS on the proposed seismic survey. NMFS (*i.e.,* National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) has also consulted internally with NMFS on the issuance of an Authorization under section 101(a)(5)(D) of the MMPA.

In May, 2015, the Endangered Species Act Interagency Cooperation Division issued a Biological Opinion with an ITS to us and to the NSF which concluded that the issuance of the Authorization and the conduct of the seismic survey were not likely to jeopardize the continued existence of blue, fin, humpback, North Atlantic right, sei, and sperm whales. The Biological Opinion also concluded that the issuance of the Authorization and the conduct of the seismic survey would not affect designated critical habitat for these species.

National Environmental Policy Act (NEPA)

The NSF has prepared a draft amended EA titled, ''Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Atlantic Ocean off New Jersey, summer 2015,'' prepared by LGL, Ltd. environmental research associates, on behalf of the NSF and Lamont-Doherty. We have also prepared an EA titled, ''Proposed Issuance of an Incidental Harassment Authorization to Lamont Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Northwest Atlantic Ocean, June–August, 2015,'' and FONSI in accordance with NEPA and NOAA Administrative Order 216–6. We provided relevant environmental information to the public through our notice of proposed Authorization (80 FR 13961, March 17, 2015) and considered public comments received prior to finalizing our EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI). We concluded that issuance of an Incidental Harassment Authorization would not significantly affect the quality of the human environment and have issued a FONSI. Because of this finding, it is not necessary to prepare an environmental impact statement for the issuance of an Authorization to Lamont-Doherty for this activity. Our EA and FONSI for this activity are available upon request (see **ADDRESSES**).

Authorization

We have issued an Incidental Harassment Authorization to Lamont-Doherty for the take of marine mammals, incidental to conducting a marine seismic survey in the Atlantic Ocean, June 1, 2015 to August 31, 2015.

Dated: May 8, 2015.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–11589 Filed 5–13–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishery Capacity Reduction Program Buyback Requests.

OMB Control Number: 0648–0376.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 935.

Average Hours per Response: Implementation plan, 6,634 hours; referenda votes, bids, seller/buyer reports and annual fee collection reports, 4 hours each; completion of fish ticket, 10 minutes; monthly fee collection report, 2 hours; advising holder/owner of conflict with accepted bidders' representations, 1 hour; potentially 270 hours-state approval/ review of plans.

Burden Hours: 15,579.

Needs and Uses: This request is for an extension of a current information collection. The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) established programs to reduce excess fishing capacity by paying fishermen to surrender their vessels/permits. These fishing capacity reduction programs, or buybacks, are conducted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, and the Magnuson-Stevens Reauthorization Act (Pub. L. 109–479). The buybacks can be funded by a Federal loan to the industry or by direct Federal or other funding. Buyback regulations are at 50 CFR part 600.

The information collected by NMFS involves the submission of buyback requests by industry, submission of bids, referenda of fishery participants and reporting of collection of fees to repay buyback loans. For buybacks involving State-managed fisheries, the State may be involved in developing the buyback plan and complying with other information requirements. NMFS requests information from participating buyback participants to track repayments of the loans as well as ensure accurate management and monitoring of the loans. The fees recordkeeping and reporting requirements at 50 CFR parts 600.1013 through 600.1017 form the basis for the collection of information.

Affected Public: Business or other for-profit organizations; individuals or households; and state, local, or tribal government.

Frequency: Annually, monthly and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: May 8, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–11601 Filed 5–13–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 15–16]

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 15–16 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

MAY 04 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-16, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Malaysia for defense articles and services estimated to cost $21 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 15–16

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:* Malaysia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$17 million
Other	$ 4 million
TOTAL	$21 million

(iii) *Description and Quantity of Articles or Services under Consideration for Purchase:* 10 AIM–120C7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, site surveys and studies, and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (YBF, Amendment #1)

(v) *Prior Related Cases, if any:* FMS Case YBF–$15M–17Jul10

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 04 May 2015

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Malaysia—AIM–120C7 AMRAAM Missiles

The Government of Malaysia has requested a possible sale of 10 AIM–120C7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, site surveys and studies, and other related elements of logistical and program support. The estimated cost is $21 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a key partner which has been, and continues to be, an important force for political stability and economic progress in Southeast Asia. This sale will increase Malaysia's interoperability with the United States, enhancing regularly scheduled joint exercises and training. It also ensures a sustained air-to-air capability for Malaysia's F/A–18D aircraft.

Malaysia will use this capability as a deterrent to regional threats and to strengthen its homeland defense. Malaysia, which already has AMRAAM missiles in its inventory, will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support does not alter the basic military balance in the region.

The principal contractor will be Raytheon Corporation in Tucson, Arizona. The purchaser has requested offsets. At this time, agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Malaysia.

There is no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–16

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 AIM–120C Advanced Medium Range Air-to-Air Missile (AMRAAM) is a radar guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic counter measures, and interception of high-flying and low-flying and maneuvering targets. The AMRAAM All Up Round is classified Confidential, major components and subsystems range from Unclassified to Confidential, and technical data and other documentation are classified up to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to Malaysia.

[FR Doc. 2015–11599 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

AFRICOM Partnership Forum (APF); Notice of Meeting; Correction

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

ACTION: Notice of meeting; correction.

SUMMARY: On Thursday, April 2, 2015 (80 FR 17729), the Department of Defense published a notice titled Africa Partnership Forum (APF) Day; Notice of Meeting. Subsequent to the publication of that notice, the Department of Defense discovered several errors throughout the published notice. This notice corrects those errors.

DATES: This notice is effective May 14, 2015.

FOR FURTHER INFORMATION CONTACT: Aaron Siegel, 571–372–0488.

SUPPLEMENTARY INFORMATION: On page 17729, make the following corrections:

1. The subject of the notice is corrected to read as set forth above.

2. In the **SUMMARY** section, in the first column, in the second line, ''(USAFRTCOM)'' should read ''(USAFRICOM)''.

3. In the **SUMMARY** section, in the first column, in the third and fourth lines, ''Africa Partnership Forum (APF) Day'' should read ''AFRICOM Partnership Forum.''

4. In the **SUMMARY** section, in the second column, in the second and third lines, ''Africa Partnership Forum Day'' should read ''AFRICOM Partnership Forum.''

5. In the **FOR FURTHER INFORMATION CONTACT** section, in the 13th and 14th lines, ''USAFRICOM Africa Partnership Forum (APF)'' should read ''AFRICOM Partnership Forum (APF)''.

6. In the **FOR FURTHER INFORMATION CONTACT** section, in the second paragraph, the second sentence ''The three-day, USAFRICOM APF 8–12 will be held in Stuttgart, Germany'' should read ''The three-day, APF June 8–12 will be held in Stuttgart, Germany.''

7. In the **SUPPLEMENTARY INFORMATION** section, immediately following the fourth paragraph, add the following sentence: ''Additional details about the agenda can be found at *http://www.ncsi.com/africom/2015/index.php.*

Dated: May 11, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–11650 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 15–21]

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 15–21 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

MAY 04 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-21, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Singapore for defense articles and services estimated to cost $130 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 15–21

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:* Singapore
(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 85 million
Other	$ 45 million
TOTAL	$130 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Singapore has requested a possible sale for the upgrade of 60 F–16C/D/D+ aircraft. The upgrades will address reliability, supportability, and combat effectiveness concerns associated with its aging F–16 fleet. Items included in the proposed sale are 50 Joint Helmet-Mounted Cueing System, 90 AN/APX–126 Advanced Identification Friend or Foe Interrogator/Transponders, 150 LAU–129 Missile Launchers, 8 KMU–572/B 500lbs Joint Direct Attack Munition (JDAM) Tail Kits, 9 KMU–556/B 2000lbs JDAM Tail Kits, 2 FMU–152 Munition Fuze Units, 10 MK–82 500lbs Inert Bombs, 3 MK–84 2000lbs Inert Bombs, 12 LN–260 Embedded Global Positioning System/Inertial Navigation Systems (GPS/INS), 20 GBU–39/B Small Diameter Bombs (SDB), 92 Link-16 Multifunctional Information Distribution System/Low Volume Terminals (MIDS/LVT), 2 SDB Guided Test Vehicles, Computer Control Group and Tail Assembly for GBU–49, DSU–38/40 Proximity Sensor for JDAM, GBU–39 Tactical training Round, ADU–890/E and 891 Adaptor Group for

Common Munitions Built-In-Test/Reprogramming Equipment, Encryption/Decryption devise, MIDS/LVT Ground Support Station, spare and repair parts, repair and return, support equipment, publications and technical documentation, personnel training and training equipment, tool and test equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of program and logistics support.

(iv) *Military Department:* Air Force (QAW, Amendment #1)

(v) *Prior Related Cases, if any:*
FMS case NCY–$202M–27Mar10
FMS case QAW–$1.39B–Pending

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 04 May 2015

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Singapore—F–16 Block 52 Upgrade Program

The Government of Singapore has requested a possible sale for the upgrade of 60 F–16C/D/D+ aircraft. The upgrades will address reliability, supportability, and combat effectiveness concerns associated with its aging F–16 fleet. This proposed sale contains additional requirements not previously identified in congressional notification 13–67. Items included in the proposed sale are 50 Joint Helmet-Mounted Cueing System, 90 AN/APX–126 Advanced Identification Friend or Foe Interrogator/Transponders, 150 LAU–129 Missile Launchers, 8 KMU–572/B 500lbs Joint Direct Attack Munition (JDAM) Tail Kits, 9 KMU–556/B 2000lbs JDAM Tail Kits, 2 FMU–152 Munition Fuze Units, 10 MK–82 500lbs Inert Bombs, 3 MK–84 2000lbs Inert Bombs, 12 LN–260 Embedded Global Positioning System/Inertial Navigation Systems (GPS/INS), 20 GBU–39/B Small Diameter Bombs (SDB), 92 Link-16 Multifunctional Information Distribution System/Low Volume Terminals (MIDS/LVT), 2 SDB Guided Test Vehicles, Computer Control Group and Tail Assembly for GBU–49, DSU–38/40 Proximity Sensor for JDAM, GBU–39 Tactical training Round, ADU–890/E and 891 Adaptor Group for Common Munitions Built-In-Test/Reprogramming Equipment, Encryption/Decryption devise, MIDS/LVT Ground Support Station, spare and repair parts, repair and return, support equipment, publications and technical documentation, personnel training and training equipment, tool and test equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of program and logistics support. The estimated cost is $130 million.

This proposed sale contributes to the foreign policy and national security of the United States by increasing the ability of the Republic of Singapore Air Force (RSAF) to support regional security. The proposed sale improves the security of a strategic partner which has been, and continues to be, an important force for political stability and economic progress in the Asia-Pacific region.

The proposed upgrade improves both the capabilities and reliability of the RSAF's aging fleet of F–16s. The improved capability, survivability, and reliability of the newly upgraded F–16s will enhance the RSAF's ability to defend its borders and contribute to coalition operations. The RSAF will have no difficulty absorbing this additional equipment and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be:

The Lockheed Martin Aeronautics Company Fort Worth, Texas
BAE Advanced Systems Greenland, New York
Boeing Integrated Defense Systems St Louis, Missouri
ITT Defense Electronics and Services McLean, Virginia
ITT Integrated Structures North Amityville, New York
ITT Night Vision Roanoke, Virginia
L3 Communications Arlington, Texas
Lockheed Martin Missile and Fire Control Dallas, Texas
Lockheed Martin Simulation, Training, and Support Fort Worth, Texas
Northrop-Grumman Electro-Optical Systems Garland, Texas
Northrop-Grumman Election Systems Baltimore, Maryland
The Raytheon Company Goleta, California
Raytheon Missile Systems Tucson, Arizona

There are no known offset agreements proposed in connection with this potential sale.

Implementation of the sale will not require the assignment of any additional U.S. Government or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–21

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 Joint Helmet Mounted Cueing System (JHMCS) is a modified HGU–55/P helmet that incorporates a visor-projected Heads-Up Display (HUD) to cue weapons and aircraft sensors to air and ground targets. This system projects visual targeting and aircraft performance information on the back of the helmet's visor, enabling the pilot to monitor this information without interrupting his field of view through the cockpit canopy. This provides improvement for close combat targeting and engagement. Hardware is Unclassified.

2. The AN/APX–126 Advanced Identification Friend or Foe (AIFF) is a system capable of transmitting and interrogation Mode 4 and/or Mode 5. It is Unclassified unless/until Mode 4 and/or Mode 4 operational evaluator parameters are loaded into the equipment. Classified elements of the AIFF system include software object code, operational characteristics, parameter, and technical data. Mode 4 and Mode 5 anti-jam performance specification/data, software source code, algorithms, and TEMPEST plans or reports will not be offered, released discussed, or demonstrated. The AN/APX–126 classified up to Secret when mode 4 operational evaluator parameters are loaded into the classified element.

3. The Joint Direct Attack Munitions (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather ''smart'' munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass. The JDAM All Up Round and all of its components are unclassified, technical data for JDAM is classified up to Secret.

4. The GBU–39/B Small Diameter Bomb is a 250 pound class weapon

designed as a small, all weather, autonomous, conventional, air-to-ground, precision glide weapon able to strike fixed and stationary re-locatable targets from standoff range. The payload/warhead is a very effective multipurpose penetrating and blast fragmentation warhead coupled with a cockpit selectable electronic fuze. Its size and accuracy allow for an effective munition with less collateral damage. Sensitive and/or classified (up to Secret) elements of the proposed acquisition includes hardware, accessories, components, and associated software.

5. The Multifunctional Information Distribution System/Low Volume Terminal (MIDS/LVT) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. The MIDS/LVT terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.

6. The MK–82/84 inert bombs are 500lbs/2000lbs practice general purpose bombs respectively designed to attack soft and intermediately protected targets. These bomb are used during program development, integration, and testing. The weapons are Unclassified.

7. If a technologically advanced adversary obtains knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

8. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

9. All defense articles and services listed in this transmittal have been authorized for release and export to Singapore.

[FR Doc. 2015–11612 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0047]

Privacy Act of 1974; system of records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system of records notice is WUSU 18, Accounts Payable Records.

DATES: Comments will be accepted on or before June 15, 2015. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 11, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

WUSU 18

Accounts Payable Records (February 22, 1993, 58 FR 10920).

REASON:

Based on a recent review of WUSU 18, Accounts Payable Records, it has been determined that this system of records is covered by system of records notices T7801, myInvoice System (October 12, 2006, 71 FR 60121) and T7333, Integrated Automated Travel System (IATS) (April 23, 2010, 75 FR 21248).

Therefore, WUSU 18, Accounts Payable Records can now be deleted.

[FR Doc. 2015–11656 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0042]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system of records notice is WUSU 14, entitled ''USUHS Occupational Physical Examination Program''.

DATES: Comments will be accepted on or before June 15, 2015. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 11, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

WUSU 14

USUHS Occupational Physical Examination Program (February 22, 1993, 58 FR 10920)

REASON:

Based on a recent review of WUSU 14, USUHS Occupational Physical Examination Program, it has been determined that this system of records is covered by system of records notice OPM/GOVT–10, entitled ''Employee Medical File System Records'' (June 21, 2010, 75 FR 35099).

Therefore, the system of record notice WUSU 14, USUHS Occupational Physical Examination Program can be deleted.

[FR Doc. 2015–11661 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 15–28]

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 15–28 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

MAY 04 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-28, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Indonesia for defense articles and services estimated to cost $47 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 15–28

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:* Indonesia
(ii) *Total Estimated Value:*

Major Defense Equipment *	$36 million
Other	$11 million
TOTAL	$47 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 30 AIM–9X–2 Sidewinder Block II All-Up-Round Missiles, 20 AIM–9X–2 Captive Air Training Missiles (CATM), 2 CATM–9X–2 Block II Tactical Missile Guidance Units, 4 CATM–9X–2 Block II Guidance Units, and 2 Dummy Air Training Missiles, containers, test sets and support equipment, spare and repair parts, publications and technical documents, personnel training and training equipment, U.S. Government and contractor technical assistance, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (ALC)
(v) *Prior Related Cases:* 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:* 04 May 2015

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Indonesia—AIM–9X–2 Sidewinder Missiles

The Government of Indonesia has requested a possible sale of 30 AIM–9X–2 Sidewinder Block II All-Up-Round Missiles, 20 AIM–9X–2 Captive Air Training Missiles (CATM), 2 CATM–9X–2 Block II Tactical Missile Guidance Units, 4 CATM–9X–2 Block II Guidance Units, and 2 Dummy Air Training Missiles, containers, test sets and support equipment, spare and repair parts, publications and technical documents, personnel training and training equipment, U.S. Government and contractor technical assistance, and other related elements of logistics and program support. The estimated cost is $47 million.

This proposed sale will contribute to the foreign policy objectives and national security interests of the United States by making Indonesia more capable of defeating threats to regional stability and strengthening its homeland defense. It will lessen the probability that Indonesia will need to rely upon deployment of U.S. combat forces to maintain or restore stability in the region.

The proposed sale also will improve Indonesia's capability in current and future coalition efforts. Acquisition of the AIM–9X missile supports Indonesia's efforts to become a more capable defensive force and will also provide key elements required for interoperability with U.S. forces. Indonesia should have no difficulty absorbing this new capability into its armed forces.

The proposed sale of this weapon system will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missile Systems Company in Tucson, Arizona. There are no known offset requirements in connection with this potential sale.

Implementation of this proposed sale may require the assignment of additional U.S. Government or contractor personnel to Indonesia on a temporary basis in conjunction with program technical and management oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–28

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 AIM–9X–2 Block II Sidewinder Missile represents a substantial increase in missile acquisition and kinematics performance over the AIM–9M and replaces the AIM–9X Block I Missile. The missile includes a high off-boresight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software algorithms are the most sensitive portion of the AIM–9X–2 missile. The software continues to be modified via a pre-planned product improvement (P^3I) program in order to improve its counter-countermeasure capabilities. No software source code or algorithms will be released. The missile is classified as Confidential.

2. The AIM–9X–2 will result in the transfer of sensitive technology and information. The equipment, hardware, and documentation are classified Confidential. The software and operational performance are classified Secret. The seeker/guidance control section and the target detector are Confidential and contain sensitive state-of-the-art technology. Manuals and technical documentation that are necessary or support operational use and organizational management are classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are classified Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar advanced capabilities.

4. 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 US foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Indonesia.

[FR Doc. 2015–11613 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2015–OS–0046]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system of records notice is JS008CSD, entitled ''Joint Protection Enterprise Network.''

DATES: Comments will be accepted on or before June 15, 2015. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in the **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and

Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 11, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

JS008CSD

Joint Protection Enterprise Network (September 26, 2003, 68 FR 55593).

REASON:

Based on a review of JS008CSD, Joint Protection Enterprise Network, it has been determined that this system of records was transferred to USNORTHCOM and the system was subsequently terminated and records were deleted due to lack of funding in July 2006. This is confirmed by the DoD Inspector General Report, Subject: The Threat and Local Observation Notice (TALON) Report Program (Report No. 07–INTEL–09), dated June 27, 2007. Therefore, the JS008CSD system of records notice can be deleted.

[FR Doc. 2015–11644 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–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 Defense Health Board (''the Board'').

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

SUPPLEMENTARY INFORMATION: This committee's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d).

The Board is a discretionary Federal advisory committee that provides independent advice and recommendations to maximize the access to safety and quality of health care for Department of Defense (DoD) health care beneficiaries.

The Board provides the Secretary of Defense and/or the Deputy Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the Assistant Secretary of Defense for Health Affairs, independent advice and recommendations on matters pertaining to: (a) DoD healthcare policy and program management; (b) health research programs; (c) treatment and prevention of disease and injury; (d) promotion of health and wellness within the DoD and the delivery of efficient, effective high-quality health care services to DoD beneficiaries; and (e) other health-related matters of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(P&R). The Board reports to the Secretary of Defense and/or the Deputy Secretary of Defense, through the USD(P&R). The USD(P&R), pursuant to DoD policy, may act upon the Board's advice and recommendations.

The Board is composed of no more than 19 members who are appointed by the Secretary of Defense or the Deputy Secretary of Defense. The members are eminent authorities in one or more of the following disciplines: Health care research/academia, infectious disease, occupational/environmental health, public health, health care policy, trauma medicine/systems, clinical health care, strategic decision making, bioethics or ethics, beneficiary representative, neuroscience, and behavioral health. The USD(P&R) selects and appoints the Board's President from the total membership approved by the Secretary of Defense or Deputy Secretary of Defense.

Each member, based upon his or her individual professional experience, provides his or her best judgment on the matters before the Board, and he or she does so in a manner that is free from conflict of interest. Board members who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee (SGE) members. Board members who are full-time or permanent part-time Federal officers or employees will serve as regular government employee (RGE) members pursuant to 41 CFR 102–3.130(a). No member may serve more than two consecutive terms of service without Secretary of Defense or Deputy Secretary of Defense approval.

Board members are not compensated for service on the Board, but each member is reimbursed for travel and per diem as it pertains to official business of the Board. Pursuant to DoD policies and procedures, the USD(P&R) may appoint experts or consultants with special expertise to assist, on an ad hoc intermittent basis, the Board or its subcommittees on specific issues. These experts or consultants have no voting rights whatsoever and will not engage or participate in any deliberations by the Board or its subcommittees. These experts or consultants, if not full-time or permanent part-time Federal officers or employees, will be appointed pursuant to 5 U.S.C. 3109, serve as SGEs.

The DoD, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(P&R) as the Board's Sponsor.

Such subcommittees will not work independently of the Board and will report all of their recommendations and advice solely to the Board for full and open deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Board, directly to the DoD or any Federal officers or employees. Each member, based upon his or her individual professional experience, provides his or her best judgment on the matters before the Board, and he or she does so in a manner that is free from conflict of interest. All subcommittee members will be appointed by the Secretary of Defense or the Deputy Secretary of Defense to a term of service of one-to-four years, with annual renewals, even if the individual in question is already a member of the Board. Subcommittee member will not serve more than two consecutive terms of service, unless authorized by the Secretary of Defense or the Deputy Secretary of Defense. Subcommittee members who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 CFR 102–3.130(a) to serve as RGE members. With the

exception of reimbursement of official travel and per diem related to the Board or its subcommittees, subcommittee members will serve without compensation. The USD(P&R), as the Board's Sponsor, selects and appoints the Board's subcommittee chairs from the total membership of the subcommittee.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures. Currently, DoD has approved the following permanent subcommittees to the Board:

a. Health Care Delivery Subcommittee: This subcommittee is composed of not more than nine members, who are eminent authorities in at least one of the following disciplines: Health care research/academia, strategic decision making, health care policy and clinical health care.

The subcommittee, when tasked according to DoD policies and procedures, provides advice on matters pertaining to health care delivery, to include DoD health care policy and program management, as well as research.

b. Medical Ethics Subcommittee: This subcommittee is composed of not more than five members, who are eminent authorities in at least one of the following disciplines: Strategic decision making, clinical health care, and bioethics or ethics. One member must have formal bioethics or medical ethics training or expertise.

The subcommittee, when tasked according to DoD policies and procedures, provides advice on matters pertaining to medical ethics.

c. Neurological/Behavioral Health Subcommittee: This subcommittee is composed of not more than 10 members, who are eminent authorities in the discipline of neuroscience and behavioral health.

The subcommittee, when tasked according to DoD policies and procedures, provides advice on matters pertaining to psychological/mental health issues and neurological symptoms or conditions among members of the Armed Forces and their families.

d. Public Health Subcommittee: This subcommittee is composed of not more than 10 members, who are eminent authorities in at least one of the following disciplines: Infectious disease, occupational/environmental health, and public health.

The subcommittee, when tasked according to DoD policy and procedures, provides advice on matters pertaining to improving the overall health of members of the Armed Forces and their families through the evaluation of DoD public health programs and initiatives, including education, health promotion, and prevention activities, as well as disease and injury prevention research.

e. Trauma and Injury Subcommittee: This subcommittee is composed of not more than 10 members, who are eminent authorities in the disciplines of trauma medicine and systems.

The subcommittee, when tasked according to DoD policies and procedures, provides advice on matters pertaining to trauma and injury, to include methods for prevention, recognition, clinical management, and treatment.

The Board's Designated Federal Officer (DFO) must be a full-time or permanent part-time DoD officer or employee, designated in accordance with established DoD policies and procedures. The Board's DFO is required to attend at all meetings of the Board and its subcommittee for the entire duration of each and every meeting. However, in the absence of the Board's DFO, a properly approved Alternate DFO, duly designated to the Board according to established DoD policies and procedures, must attend the entire duration of all meetings of the Board and its subcommittees.

The DFO, or the Alternate DFO, calls all meetings of the Board and its subcommittees; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Defense Health Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board.

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

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: May 11, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–11643 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2015–OS–0045]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system of records notice is WUSU 13, USUHS Civilian Employee Health Records.

DATES: Comments will be accepted on or before June 15, 2015. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended,

have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/*.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 11, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

WUSU 13

USUHS Civilian Employee Health Records (February 22, 1993, 58 FR 10920).

Reason: Based on a recent review of WUSU 13, USUHS Civilian Employee Health Records, it has been determined that this system of records is covered by system of records notice OPM/GOVT–10, Employee Medical File System Records (June 21, 2010, 75 FR 35099) therefore, this notice can be deleted.

[FR Doc. 2015–11645 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 15–32]

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 15–32 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAY 04 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. 15-32, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Japan for defense articles and services estimated to cost $3 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,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No.: 15–32

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:* Government of Japan

(ii) *Total Estimated Value:*

Major Defense Equipment *	$1.8 billion
Other	$1.2 billion
Total	$3.0 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 17 V–22B Block C Osprey aircraft, 40 AE1107C Rolls Royce Engines, 40 AN/AAQ–27 Forward Looking InfraRed Radars, 40 AN/AAR–47 Missile Warning Systems, 40 AN/APR–39 Radar Warning Receivers, 40 AN/ALE–47 Countermeasure Dispenser Systems, 40 AN/APX–123 Identification Friend or Foe Systems, 40 AN/APN–194 Radar Altimeters, 40 AN/ARN–147 VHF Omni-directional Range (VOR) Instrument Landing System (ILS) Beacon Navigation Systems, 40 629F–23 Multi-Band Radios (Non-COMSEC), 40 AN/ASN–163 Miniature Airborne Global Positioning System (GPS) Receivers (MAGR), 40 AN/ARN–153 Tactical Airborne Navigation Systems, 80 Night Vision Goggles, Joint Mission Planning System (JMPS) with unique planning components, publications and technical documentation, aircraft spares and repair parts, repair and return,

aircraft ferry services, tanker support, support and test equipment, personnel training and training equipment, software, U.S. Government and contractor engineering, logistics and technical support services, and other elements of technical and program support.

(iv) *Military Department:* Navy (SCH)

(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:* 04 May 2015

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan—V–22B Block C Osprey Aircraft

The Government of Japan has requested a possible sale of 17 V–22B Block C Osprey aircraft, 40 AE1107C Rolls Royce Engines, 40 AN/AAQ–27 Forward Looking InfraRed Radars, 40 AN/AAR–47 Missile Warning Systems, 40 AN/APR–39 Radar Warning Receivers, 40 AN/ALE–47 Countermeasure Dispenser Systems, 40 AN/APX–123 Identification Friend or Foe Systems, 40 AN/APN–194 Radar Altimeters, 40 AN/ARN–147 VHF Omni-directional Range (VOR) Instrument Landing System (ILS) Beacon Navigation Systems, 40 629F–23 Multi-Band Radios (Non-COMSEC), 40 AN/ASN–163 Miniature Airborne Global Positioning System (GPS) Receivers (MAGR), 40 AN/ARN–153 Tactical Airborne Navigation Systems, 80 Night Vision Goggles, Joint Mission Planning System (JMPS) with unique planning components, publications and technical documentation, aircraft spares and repair parts, repair and return, aircraft ferry services, tanker support, support and test equipment, personnel training and training equipment, software, U.S. Government and contractor engineering, logistics and technical support services, and other elements of technical and program support. The estimated cost is $3 billion.

This proposed sale will contribute to the foreign policy and national security of the United States. Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist Japan in developing and maintaining a strong and ready self-defense capability. This proposed sale is consistent with U.S. objectives and the 1960 Treaty of Mutual Cooperation and Security.

Japan is modernizing its transport fleet to better support its defense and special mission needs. The proposed sale of V–22B Block C Osprey aircraft will greatly enhance the Japan Ground Self-Defense Force's humanitarian and disaster relief capabilities and support amphibious operations. This sale will promote burden sharing with our ally and interoperability with U.S. forces. Japan will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this weapon system will not alter the basic military balance in the region.

The principal contractors will be Bell Helicopter and Boeing Rotorcraft Systems via a joint venture arrangement with initial assembly of aircraft fuselage occurring in Ridley Park, PA and final aircraft assembly occurring in Amarillo, TX. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will require travel of United States Government or contractor representatives to GOJ on a temporary basis for program technical support and management oversight.

There will be no adverse impact on United States defense readiness as a result of this proposed sale.

Transmittal No.: 15–32

Notice of Proposed Issuance of LOA Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*

1. The V–22 Osprey is a United States military multi-mission, Tilt-Rotor aircraft with both a Vertical Takeoff and Landing (VTOL), and Short Takeoff and Landing (STOL) capability. It is designed to combine the functionality of a conventional helicopter with the long-range, high-speed cruise performance of a turboprop aircraft. The United States Marine Corps (USMC) began crew training for the Osprey in 2000, and fielded it in 2007. The V–22 aircraft is classified Secret.

2. The AN/AAQ–27A Forward Looking InfraRed (FLIR) is a third-generation, mid-wavelength infrared (MWIR) imaging system that allows aircrew to see through darkness, smoke, haze, and adverse weather. The system incorporates a state-of-the-art MWIR indium-antimonide (InSb) staring focal plane array with 480 x 640 detector elements. It has demonstrated superb image quality and range performance using non-developmental, in-production components to provide higher resolution imagery than current long-wavelength infrared systems. The system is Unclassified.

3. The AN/APR–39 Radar Warning Receiver (RWR) System monitors the environment for pulsed radar signals, characterizes and identifies them, and alerts the crew to the existence of emitters. The AN/APR–39 contributes to full-dimensional protection by improving individual aircraft probability of survival through improved aircrew situational awareness of the electromagnetic threat environment. These systems have specific aircraft applications providing varying levels and types of warning to allow aircrew to initiate evasive maneuvers or deploy active countermeasures. The hardware is classified as Unclassified and associated database is classified Secret.

4. The AN/ALE–47 Countermeasures Dispenser System (CMDS) is an Electronic Warfare (EW) System providing combat aircrews with enhanced survivability in all threat environments. This on board, self-protection capability stems from the integration of RWR hardware with a system for the dispensing of expendable countermeasures. The AN/ALE–47 CMDS provides the aircrew with a ''smart'' countermeasures dispensing system, allowing the aircrew to optimize the countermeasures employed against anti-aircraft threats. The system consists of five major components and several sub-components: control display units, programmers, safety switches, sequencers, and dispensers. The hardware is classified as Unclassified and associated database is classified Secret.

5. The AN/AAR–47 is an Electronic Warfare (EW) system designed to protect aircraft against Infrared-Guided (IR) missile threats, laser-guided/laser-aided threats, and unguided munitions. Upon detection of the threat, the system will provide an audio and visual sector warning to the pilot. For IR missile threats, the system automatically initiates countermeasures by sending a command signal to the CMDS. The AN/AAR–47 includes sensor pre-processing for improved performance in high-clutter environments. The hardware is classified as Unclassified and associated database is classified Secret.

6. The AN/APX–123 is an Identification Friend or Foe (IFF) digital transponder and is also used for the safe operation of military aircraft in civilian airspace. The AN/APX–123 meets all United States and North Atlantic Treaty Organization (NATO) mode 5

requirements. The transponder's open-system architecture design and high-density field programmable gate array technology ensures ongoing versatility and future utility through software upgrades, without the risk and cost associated with hardware modifications. The hardware is classified as Unclassified and associated keymat is classified as Secret.

7. The AN/ARN–153 is a full featured Tactical Air Navigation (TACAN) system capable of supporting the operational requirements of high performance aircraft in a lightweight compact design. The AN/ARN–153 supports four modes of operation: receive mode; transmit-receive mode; air-to-air receive mode; and air-to-air transmit-receive mode. The system is Unclassified.

8. The AN/ARN–147 system combines all VHF Omni Ranging/Instrument Landing System (VOR/ILS) functions into one compact, lightweight, low-cost set. It is the first militarized VHF navigation receiver to provide optional internal MIL–STD–1553B capability. The solid-state system is MIL–E–5400 class II qualified and meets international operability requirements by providing 50-kHz channel spacing for 160–VOR and 40-localizer/glideslope channels. Digital and analog outputs of the AN/ARN–147 ensure compatibility with high-performance flight control systems and both digital and analog instruments. Modular construction techniques give you quick access to all cards and modules to reduce repair time. The system is Unclassified.

9. The AN/ARC–210 multimode integrated communications system is designed to provide multimode voice and data communications in either normal or jam-resistant modes in line-of-sight mode. The system is capable of establishing 2-way communication links over the 30 to 512MHz frequency range with tactical aircraft environments. The system is Unclassified.

10. The AN/APN–194 Radar Altimeter Receiver-Transmitter is a high-resolution device which measures altitude from 0 to 5,000 ft. Above Ground Level (AGL). The radar altimeter measures the time (analogous to distance) required for a pulse of electromagnetic energy to travel from the aircraft to the ground and back to the aircraft. The AN/APN–194 employs a narrow-pulse transmission in the C-band range with leading edge tracking of the echo pulse. Altitude range information is obtained by comparing the received echo pulse with a timed ramp voltage generated simultaneously with the transmitted pulse. The output of the AN/APN–194 is fed into the autopilot of the target to control the altitude of low-flying targets. The system is Unclassified.

11. The AN/ASN–163 is a 5-channel Miniature Airborne GPS Receiver (MAGR) that provides Over-The-Horizon and secure navigation capabilities using satellite information. The hardware is classified as Unclassified and associated keymat is classified as Confidential.

12. The AN/AVS–9 is a dual tube night vision goggle. Third generation image intensifiers are standard for military night vision. The goggle offers high resolution, high gain, photoresponse to near infrared, and exceptional reliability. There are helmet mount configurations designed for fixed-wing and rotary-wing applications, adapting to most aviator helmets. The system is Unclassified.

13. Joint Mission Planning System (JMPS) is a Windows7, PC-based common approach for aircraft mission planning. It is a system of common and host-platform-unique mission planning applications for Navy and Marine Corps aircraft. Using a ''building block'' approach, developers integrate and assemble a JMPS Mission Planning Environment (MPE) from a set of software sub-components to meet the needs of a particular aircraft type. An MPE consists of a framework, one or more common components/federated applications, and then a Unique Planning Component (UPC).—The foundation of an MPE is the framework, which allows the host operating system to interface and interact with the MPE. The second level of an MPE consists of the common components and/or federated applications; these applications provide functionality that is common to multiple aircraft platforms (*i.e.* weather or GPS munitions). The final level of software is the UPC, which provides platform-specific functionality and integrates the common component functions and the framework interface to produce the overall mission planning software environment for the platform. When bundled, the three levels of software become an MPE that is specific to a single aircraft type. Depending on the aircraft model, a JMPS MPE might operate on stand-alone, locally networked, or domain controlled Windows 7 computers, or a mixture of all three operating environments. The system is Unclassified.

14. If a technologically advance adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar advanced capabilities.

15. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive information being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objective outlined in the Policy Justification.

16. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Japan.

[FR Doc. 2015–11614 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 15–18]

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 15–18 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

MAY 04 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-18, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Jordan for defense articles and services estimated to cost $21 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 15–18

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:* Jordan

(ii) *Total Estimated Value:*

Major Defense Equipment	$19 million
Other	$ 2 million
Total	$21 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* one (1) UH–60M Black Hawk Helicopter, with two (2) T700–GE–701D Engines, spare and repair parts, publications and technical data, support equipment, communication equipment, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, aircraft survivability equipment, aviation mission planning system, tools and test equipment, and other related elements of logistical and program support.

(iv) *Military Department:* Army (VAT)

(v) *Prior Related Cases, if any:* FMS case WAT–$26M–5Oct05

(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:* 04 May 2015

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Jordan—UH–60M VIP Blackhawk Helicopter)

The Government of Jordan has requested a possible sale of one (1) UH–60M Black Hawk Helicopter, with two (2) T700–GE–701D Engines, spare and repair parts, publications and technical data, support equipment, communication equipment, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, aircraft survivability equipment, aviation mission planning system, tools and test equipment, and other related elements of logistical and program support. The estimated cost is $21 million.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale of one Black Hawk helicopter to Jordan will provide intra-country transportation for the Royal family, Jordanian officials, visiting Heads of State, and other dignataries. Jordan, which already has Black Hawk helicopters in its inventory, will have no difficulty absorbing this additional helicopter.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Sikorsky Aircraft in Stratford, Connecticut; and General Electric Company in Cincinnati, Ohio. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor representatives to Jordan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–18

Notice of Proposed Issuance of Letter Of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(ix) *Sensitivity of Technology:*

1. The UH–60M Black Hawk Utility Helicopter contains communications and identification equipment, navigation equipment, aircraft survivability equipment, displays, and sensors. The airframe itself does not contain sensitive technology. The highest level of classified information required to be released for training, operation and maintenance of the Black Hawk is Unclassified. The highest level which could be revealed through reverse engineering or testing of the end item is Secret.

2. The AN/APR–39, Radar Signal Detecting Set provides warning of a radar directed air defense threat to allow appropriate countermeasures. This is the 1553 data bus compatible configuration. Hardware is classified Confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data and performance is classified Secret.

3. The AN/AVR–2B, Laser Warning Set is a passive laser warning system that receives, processes, and displays threat information resulting from aircraft illumination by lasers, on the multi-functional display. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering is not a major concern.

4. The AN–ARC–231 is an airborne Very High Frequency/Ultra High Frequency (VHF/UHF) Line of Sight and DAMA SATCOM communication system. The ARC–231 provides airborne, multi-band, multi-mission, secure anti-jam voice, data and imagery network capable communications in a compact radio set.

5. The AN–ARC–201D Single Channel Ground and Airborne Radio System (SINCGARS) is a tactical airborne radio subsystem that provides secure, anti-jam voice and data communication. The Enhanced Data Modes (EDM) of the radio employs a Reed-Solomon Forward Error Correction (FEC) technique that provides enhanced bit-error-rate performance. The EDM Packet Data Mode supports packet data transfer from the airborne host computer to another airborne platform or the ground-based equivalent SINCGARS system. Performance capabilities, ECM/ECCM specifications and Engineering Change Orders (ECOs) are classified Secret.

6. The AAR–57(V) Common Missile Warning System detects threat missiles in flight, evaluates potential false alarms, declares validity of threat and selects appropriate IRCM. Includes Electro-Optical Missile Sensors, Electronic Control Unit, Sequencer and Improved Countermeasures Dispenser. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering is not a major concern.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

8. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

9. All defense articles and services listed in this transmittal have been authorized for release and export to Jordan.

[FR Doc. 2015–11600 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0044]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a New System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records, DMDC 19 DoD, entitled ''Secure Web Fingerprint Transmission (SWFT)'' to its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will provide a means for all DoD individuals required to submit electronic fingerprints and demographic information to the Office of Personnel and Management (OPM) and the Federal Bureau of Investigation (FBI) for a personnel security clearance or as part of a background investigation.

Additionally, SWFT will transmit an electronic fingerprint file with demographic information as part of a background investigation to the Defense Manpower Data Center (DMDC) Person Data Repository (PDR) for identity matching purposes.

DATES: Comments will be accepted on or before June 15, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 5, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 19 DoD

SYSTEM NAME:

Secure Web Fingerprint Transmission (SWFT).

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD military, civilian, and contractor personnel, and non-Federal agency civilian associates (*e.g.,* American Red Cross paid employees, state employees supporting National Guard) eligible for the Common Access Card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Number (SSN), name, place of birth, date of birth, electronic fingerprint file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DoD Directive 5105.42, Defense Security Service (DSS); DoD Instruction 5200.02, DoD Personnel Security Program (PSP); 32 CFR part 156, Department of Defense Personnel Security Program (DODPSP); E.O. 10450, Security requirements for Government employment; HSPD 12, Policy for a Common Identification Standard for Federal Employees and Contractors; and E.O. 9397 (SSN), as amended.

PURPOSE:

To provide a means for all DoD individuals required to submit electronic fingerprints and demographic information to the Office of Personnel and Management (OPM) and the Federal Bureau of Investigation (FBI) for a personnel security clearance or as part of a background investigation.

Additionally, SWFT will transmit an electronic fingerprint file with demographic information as part of a background investigation to the Defense Manpower Data Center (DMDC) Person Data Repository (PDR) for identity matching purposes.

ROUTINE USES FOR RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as follows to:

The Office of Personnel and Management (OPM) and the Federal Bureau of Investigation (FBI) for investigative purposes related to the conduct of security clearance investigations and background checks.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD blanket routine uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsindex/BlanketRoutineUses.aspx.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF THE RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

SSN and/or name.

SAFEGUARDS:

Electronic records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Electronic data are stored in an encrypted database. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Electronic fingerprints are destroyed/deleted three (3) year(s) after successful transmission.

Unsuccessfully transmitted electronic fingerprints are destroyed/deleted when 90 days old.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Identity and Personnel Assurance, Defense Manpower Data Center, 4800 Mark Center Drive, Alexandria, VA 22350–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should send written inquiries to: SWFT Program Manager, Personnel Security and Assurance Division, Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93955–6771.

Signed, written requests must contain the full name and SSN of the subject individual, along with a return address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system must send signed written inquiries to: Office of the Secretary of Defense/Joint Staff Freedom of information Act Request Service Center, 4800 Mark Center Drive, Alexandria, VA 22350–3100.

Signed, written requests must contain the full name and SSN of the individual and address where the records are to be returned.

CONTESTING RECORDS PROCEDURES:

The OSD rules for accessing records, contesting contents, and appealing initial agency determinations are

contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, industrial facilities cleared by the Personnel Security Management Office for Industry (PSMO–I), and DoD Component fingerprint capture devices.

EXEMPTIONS CLAIMED BY THE SYSTEM:

None.

[FR Doc. 2015–11606 Filed 5–13–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period for the Draft Environmental Impact Statement/Overseas Environmental Impact Statement for Commonwealth of the Northern Mariana Islands Joint Military Training

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice.

SUMMARY: On April 03, 2015, the Department of Navy (DoN) published a Notice of Availability and Notice of Public Meetings for the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for Commonwealth of the Northern Mariana Islands Joint Military Training (80 FR 18385, April 03, 2015). The purpose of this notice is to announce an extension of the 60-day public comment period. The public comment period will be extended by 60 days to end on August 3, 2015 Eastern Daylight Time (E.D.T.) [August 4, 2015, Chamorro Standard Time (ChST)].

DATES: The extended 120-day public comment period for the Draft EIS began on April 3, 2015, EDT [April 04, 2015, ChST] with the publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency, and with this extension, will end on August 3, 2015, EDT [August 4, 2015, ChST]. Mailed comments should be postmarked no later than August 3, 2015, EDT [August 4, 2015, ChST] to ensure they are considered.

ADDRESSES: The public may provide comments through the project Web site at *www.CNMIJointMilitaryTrainingEIS.com,* or by mail at: Naval Facilities Engineering Command, Pacific, Attn: 09PA, Public Affairs Office, 258 Makalapa Drive, Suite 100, JBPHH, HI 96860–3134.

The Draft EIS/OEIS was distributed to federal and local agencies, elected officials, and other interested individuals and organizations. The Draft EIS/OEIS is available for public review at *www.CNMIJointMilitaryTraining EIS.com,* and at the following libraries:

(1) Joeten Kiyu Public Library, Saipan; (2) Northern Marianas College Olympio T. Borja Memorial Library, Saipan; (3) Tinian Public Library, Tinian; (4) Antonio C. Atalig Memorial Rota Public Library, Rota; (5) University of Guam Robert F. Kennedy Memorial Library, Guam; (6) Nieves M. Flores Memorial Library, Guam.

SUPPLEMENTARY INFORMATION: The DoN's proposed action is to establish live-fire Range Training Areas (RTAs) within the CNMI to address the U.S. Pacific Command Service Components' unfilled unit level and combined level training requirements in the Western Pacific. The DoN recognizes that public comments are an essential part of the National Environmental Policy Act (NEPA) process. Accordingly, the DoN established a 60-day public comment period in lieu of the minimum 45-day period required by NEPA implementing regulations. In response to requests by CNMI officials, Federal resource agencies, and the public, the DoN has extended the Draft EIS 60-day public comment period by a heretofore additional 60 days to August 3, 2015, EDT [August 4, 2015, ChST].

FOR FURTHER INFORMATION CONTACT: CNMI Joint Military Training EIS/OEIS Project Manager by email via the project Web site (*www.CNMIJointMilitary TrainingEIS.com*).

Dated: May 11, 2015.

N.A. Hagerty-Ford

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015–11674 Filed 5–13–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Strengthening U.S. Academic Programs in Accelerator Science

AGENCY: Office of High Energy Physics, Department of Energy.

ACTION: Notice of request for information (RFI).

SUMMARY: The Office of High Energy Physics (HEP), as the Department of Energy's (DOE or Department) lead office for long-term accelerator research and development (R&D), invites interested parties to provide comments on proposed policies, practices and mechanisms which DOE–HEP may implement to foster robust academic R&D and workforce development in this vitally important high technology area.

DATES: Written comments and information are requested on or before June 18, 2015.

ADDRESSES: Interested persons may submit comments only by email. Comments must be addressed to *AcademicAcceleratorScienceRFI@science.doe.gov,* with the subject line ''Academic Accelerator Science RFI Comments''.

FOR FURTHER INFORMATION CONTACT: Dr. Bruce P. Strauss, (301) 903–3705, *AcademicAcceleratorScienceRFI@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

The Challenge

Accelerators play a key role in the discovery sciences, including High Energy Physics, Nuclear Physics, and Basic Energy Sciences. Modern discovery science accelerators are high technology instruments of remarkable complexity, having advanced over eight orders of magnitude in energy since their invention. Aggressive reinvention of the underlying technology has driven improvements in this science, and has required sustained investment in accelerator science R&D that advances the methods, materials, and understanding of accelerator science.

Accelerator Science is an interdisciplinary field that encompasses the design and improvement of particle accelerators, the development of new methods of charged particle production and manipulation, and the development of unique supporting technologies needed for accelerators. Significant career specialization has evolved as the demand for ever greater performance has required reaching deep into mathematics, computation, materials science, plasma science, radio frequency technology, superconducting materials, laser engineering, and a variety of other disciplines. The accelerator science workforce must be capable of spanning both the breadth and depth of the subject matter needed to build discovery science accelerators. It must also possess the range of skills and proficiency levels needed to support operating accelerators for science, medicine, industry, security, defense, and energy & environmental applications.

National laboratories, academia, and industry each play vital, mutually reinforcing roles in the success of the accelerator-based discovery sciences, and in providing the scientific and technological advances necessary to sustain U.S. leadership in this area.

With an estimated 30,000 particle accelerators operating worldwide, there is a significant—and growing—need [1] for a technically competent workforce that can design, install, operate, upgrade, and repair accelerators.

A High Energy Physics Advisory Panel subcommittee, in 2014, identified the present deficit in the accelerator science workforce as an area of special concern, both for its impact on the Office of Science mission, and for its broader consequences.[2] [3] Approximately 10–12 accelerator science Ph.D.s graduate each year in the U.S., nearly an order of magnitude less than Europe. This is traceable to the small number of U.S. universities that have accelerator faculty and offer instruction in accelerator science.

The Response

The Department, acting through the Office of High Energy Physics in the Office of Science, is considering funding practices and mechanisms which DOE–HEP could implement to help ensure continued world-class accelerator R&D and the training of a world-class accelerator workforce.

Request for information: The objective of this RFI is to gather information about the current state of academic practice and policy surrounding accelerator science (as defined above), and to elucidate potential mechanisms to strengthen academic programs in accelerator science at U.S. institutions of higher education. Please note that this is not a request for information about specific scientific research topics. Submissions arguing the merits of specific lines of scientific research will be disregarded as unresponsive.

The questions below are intended to assist in the formulation of comments, and should not be considered as a limitation on either the number or the issues that may be addressed in such comments. The Department will make all comments available to the general public.

The DOE Office of High Energy Physics is specifically interested in receiving comments pertaining to any of the following questions:

Increasing the Recognition of Accelerator Science in Academia

1. Does your institution regard accelerator science as an academic discipline? Why or why not?

2. If your institution offers graduate training in accelerator science:

a. What is the core curriculum shared by all accelerator students, regardless of specialization? (*e.g.* What is the common coursework taken by all accelerator students?)

b. How often do students change fields to study accelerator science? From which fields do these students typically come?

c. Is your accelerator science program primarily located in the physics, applied physics, or engineering department, or in a combination of two or more of those departments?

d. What incentives would increase the likelihood that your institution would hire additional accelerator science faculty?

e. Is there an on-campus particle accelerator that is dedicated to accelerator science R&D? If not, do you make use of accelerator test facilities at U.S. national laboratories?

f. How often do collaborations occur between accelerator science and other programs at the university?

g. Does your institution actively seek out corporate sponsorship for an accelerator science program? Do private companies actively recruit students from your accelerator science program?

3. If your institution no longer offers graduate training in accelerator science, why was the program terminated?

4. What funding sources for accelerator science are you aware of?

Integrating the Roles of the Universities and the U.S. National Laboratories

5. How can the national laboratory system be best utilized by the university accelerator science community?

6. What are the current barriers (*e.g.* technical, operational, and economic) that prevent closer collaboration between universities and the national laboratories?

7. Does your university accept accelerator course credits from other institutions?

8. Do accelerator science students at your institution routinely take courses and training elsewhere?

9. What could be done to strengthen the participation of academia in the operation and improvement of existing national laboratory accelerators?

10. Considering disciplines, other than Accelerator Science, what mechanisms are in place at your university for collaboration with national laboratories? Could these mechanisms be extended to accelerator science?

Contemporary Models of University Accelerator Science

11. What examples exist of thriving academic accelerator science programs?

a. Are there policies at your university specific to the accelerator science program that are essential to its success?

b. Are there scholarships, endowed chairs, or other awards and positions that give special recognition to accelerator science?

c. Are there barriers to having accelerator scientists serve as PI or Co-I on proposals?

d. Is conversion from research faculty to full faculty in accelerator science possible? How many faculty members have attempted the transition, and how many have succeeded?

e. Are there specific attributes of the institution's culture that contribute to the success of the accelerator science program?

f. Are there joint appointments with a nearby national laboratory or a private company engaged in accelerator R&D? How many?

12. Are there successful examples of academic programs from other technologically-oriented disciplines that you believe are relevant to establishment or improvement of an accelerator science program? What key attributes make the program successful? (See 11(a)–(f) above).

13. Are there successful examples of academic accelerator science programs from other countries that you believe are relevant to the U.S. system? What key attributes make the programs successful? (See 11(a)–(f) above).

Possible Mechanisms To Encourage Academic Accelerator Science

14. What specific, cost-effective actions could be taken to:

a. Raise the academic status of accelerator science? Examples in this category might include: Funding named accelerator science faculty positions or named scholarships.

b. Improve the business case for accelerator science in a university setting? Examples in this category might include grants and practices designed to increase interactions with private industry.

c. Encourage students to choose a career in accelerator science and technology? Examples in this category might include a grant for young faculty to conduct R&D in accelerator science, a tuition stipend for a co-terminal master's degree, or grants to develop instructional materials.

[1] ''Accelerators for America's Future'', workshop report, *http://science.energy.gov/~/media/hep/pdf/accelerator-rd-stewardship/Report.pdf,* (2009).

[2] ''OHEP Workforce Development'', Report presented to HEPAP May 22, 2014, *http://science.energy.gov/~/media/hep/hepap/pdf/May%202014/Patterson_HEPAP_DOEWorkforce_v1-1.pdf* .

[3] ''HEP Workforce Development Needs'', report of the HEPAP subcommittee, June 30, 2014, *http://science.energy.gov/~/media/hep/hepap/pdf/Reports/OHEP_Workforce_Letter_Report.pdf* .

d. Increase the enrollment in education opportunities at the baccalaureate and master's level?

e. Increase the availability of hands-on training opportunities in accelerator technology?

Other Factors

15. Other than the actual award of funding, is there any specific funding agency behavior that impacts positively or negatively on the success of an accelerator science program?

16. Are there other factors, not addressed by the questions above, which contribute to the strength or weakness of U.S. academic accelerator science?

This RFI is issued to gather information that may be used to help formulate DOE–HEP funding practices and grant mechanisms to strengthen academic accelerator science.

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

James Siegrist,

Associate Director, Office of High Energy Physics.

[FR Doc. 2015–11664 Filed 5–13–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency & Renewable Energy

[Docket Number EERE–2015–BT–BC–0001]

Request for Information: Updating and Improving the DOE Methodology for Assessing the Cost-Effectiveness of Building Energy Codes

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

ACTION: Extension of public comment period.

SUMMARY: This notice announces an extension of the time period for submitting comments on the request for information on the DOE Methodology for Assessing the Cost-effectiveness of Building Energy Codes, which was originally published in the **Federal Register** on April 14, 2015 (80 FR 19974). The comment period is extended to June 3, 2015.

DATES: Comments on the RFI must be received no later than June 3, 2015.

ADDRESSES: *Instructions:* Comments must identify the docket number EERE–2015–BT–BC–0001 and may be submitted using any of the following methods:

1. *Regulations.gov: http://www.regulations.gov/#!docketDetail;D=EERE-2015-BT-BC-0001.* Follow the instructions for submitting comments.

2. *Email: BCMethodology2015BC0001@ee.doe.gov.* Include docket number EERE–2015–BT–BC–0001 in the subject line of the message.

3. Postal Mail: Ms. Brenda Edwards; U.S. Department of Energy, Building Technologies Office EE–5B, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 586–2945. Please submit one signed paper original.

Further instructions, including the use of topic identifiers, are provided in the Public Participation section of the original notice. Comments submitted in response to the notice will become a matter of public records and will be made publicly available.

Public Docket: The docket, which includes notices published in the **Federal Register** and public comments received, 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 exempt from public disclosure, may not be publicly available. A link to the docket Web page can be found under Public Participation at: *http://www.energycodes.gov/events.* This Web page will also contain a link to the docket for this notice on Regulations.gov. The Regulations.gov site will contain instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment, review comments received, or otherwise participate in the public comment process, contact Ms. Brenda Edwards by phone at (202) 586–2945 or email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeremiah Williams; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office EE–5B, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 287–1941, Email: *jeremiah.williams@ee.doe.gov.*

For legal matters, contact: Kavita Vaidyanathan; U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Mailstop GC–33, 1000 Independence Ave SW., Washington, DC 20585; Phone: (202) 586–0669, Email: *kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On April 14, 2015, the U.S. Department of Energy (DOE or the Department) published a request for information (RFI) in the **Federal Register** (80 FR 19974) to request information on how the Department may update and improve the methodology it intends to use for assessing cost effectiveness (which includes an energy savings assessment) of building energy codes. The RFI provided for the submission of comments by May 14, 2015. One commenter requested an extension of the comment period in order to sufficiently study and understand the proposed changes and their impacts. It was also noted that many interested stakeholders might also be participating in code development hearings held by the International Code Council (ICC) through April 30th. DOE has concluded that an extension of the comment period is warranted based on the timing of the ICC code development hearings, and is hereby extending the public comment period through June 3, 2015.

Issued in Washington, DC, on May 8, 2015.

Roland Risser,

Director, Building Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2015–11662 Filed 5–13–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–272–000]

Regency Field Services, LLC; Notice of Application

Take notice that on April 27, 2015, Regency Field Services, LLC (RFS), 2001 Bryan St., Suite 3700, Dallas, Texas 75201, filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting: (i) A certificate of public convenience and necessity authorizing RFS to own, operate and maintain its 8 mile 20-inch diameter Coyanosa Residue Line, located in Pecos County, Texas, for the purpose of transporting its own natural gas; (ii) a blanket certificate, pursuant to Part 157, Subpart F, of the Commission's regulations; (iii) waivers of certain regulatory requirements; and (iv) confirmation that the Commission's assertion of jurisdiction over the Coyanosa Residue Line will not jeopardize the non-jurisdictional status of RFS's otherwise non-jurisdictional gathering and processing facilities and operations, all as more fully set forth in the application which is on file with the Commission

and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

Any questions regarding this application should be directed to Lisanne Crowley, Troutman Sanders LLP, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004, by telephone at 202–274–2814 or by email at *lisanne.crowley@troutmansanders.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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.

Comment Date: May 28, 2015.

Dated: May 7, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11638 Filed 5–13–15; 8:45 am]

BILLING CODE 6717–01P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX15–1–000]

Electrical District No. 3 of Pinal County, Arizona; Notice of Filing

Take notice that on May 6, 2015, pursuant to sections 211 and 212 of the Federal Power Act, 16 U.S.C. 824j and 824k and Part 36 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 36, Electrical District No. 3 of Pinal County, Arizona (ED3) filed an application requesting that the Commission direct Arizona Public Service Company (APS) to provide transmission service to ED3 over APS's transmission system equivalent to the transmission service that APS provided to its merchant affiliate, APS Merchant & Trading, Inc. (APS M&T), under APS Service Agreement No. 216, prior to APS's amendment of that Service Agreement effective September 19, 2014, in Docket ER15–12–000, in order to allow APS M&T to provide partial requirements service to ED3's load, as more fully explained in the application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 5, 2015.

Dated: May 7, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11637 Filed 5–13–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13272–004]

Alaska Village Electric Cooperative, Inc., Alaska; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969, Title XI of the Alaska National Interest Lands Conservation Act, and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47,897), the Office of Energy Projects has reviewed the application for an original license to construct the Old Harbor Hydroelectric Project, and has prepared a Draft Environmental Assessment (EA) with the cooperation of the U.S. Fish and Wildlife Service (FWS). The proposed 262 kilowatt (kW) project would be constructed on the East Fork of Mountain Creek and transfer water into a powerhouse on the Lagoon Creek Tributary, near the town of Old Harbor, Kodiak Island Borough, Alaska. Some project facilities would be located on approximately 1.85 acres of federal lands of the Kodiak National Wildlife Refuge.

The draft EA contains Commission staff's analysis and the FWS staff's review of the analysis of the potential environmental impacts of the proposed hydroelectric project. The draft EA concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filings. Please file comments 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. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix ''Project No. 13272–004'' to all comments.

Please contact Adam Beeco (Commission Staff) by telephone at (202) 502–8655, or by email at *adam.beeco@ferc.gov,* if you have any questions concerning the hydroelectric licensing process or contact Stephanie Brady (FWS Staff) by telephone at (907) 306–7448 or by email at *stephanie_brady@fws.gov,* if you have questions concerning the right-of-way permit.

Dated: May 7, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11635 Filed 5–13–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–113]

Exelon Generation Company, LLC; 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:* Increases in Water Withdrawn and Consumptive Use.

b. *Project No.:* 405–113.

c. *Date Filed:* May 1, 2015.

d. *Applicant:* Exelon Generation Company, LLC (licensee).

e. *Name of Project:* Conowingo Hydroelectric Project.

f. *Location:* Hartford and Cecil counties, Maryland and York and Lancaster counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* H. Alfred Ryan, Assistant General Counsel, (215) 841–6855, or *halfred.ryan@exeloncorp.com.*

i. *FERC Contact:* Alicia Burtner, (202) 502–8038, or *alicia.burtner@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the issuance date of this notice by the Commission.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. 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.

Please include the project number (P–405–113) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee requests an increase in the consumptive use of water withdrawn from Conowingo Pond from 35.5 million gallons per day (mgd) to 49.00 mgd and an increase in the amount of watering being withdrawn from the Conowingo Reservoir from 2,236.264 mgd to 2,363.620 mgd. The licensee's requested changes were approved by the Susquehanna River Basin Commission on June 23, 2011, and the licensee anticipates that the requested modification would not result in any adverse environmental impacts. The licensee's request does not entail the construction of any new facilities to provide for the proposed increases.

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 water withdrawl and consumptive use increase. 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: May 7, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11634 Filed 5–13–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP15–971–000]

FirstEnergy Service Company v. Texas Eastern Transmission, LP; Notice of Complaint

Take notice that on May 5, 2015, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, FirstEnergy Service Company (Complainant), filed a formal complaint against Texas Eastern Transmission, LP (Respondent), alleging that the Respondent violated section 7 of the Natural Gas Act and the terms and conditions of the Certificate of Public Convenience and Necessity issued by the Commission,[1] by seeking to locate portions of the Ohio Pipeline Energy Network Project over a route that has not been certificated by the Commission, as more fully explained in the complaint.

The Complainant certifies that a copy of the complaint has been served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic 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.

Comment Date: 5:00 p.m. Eastern Time on May 26, 2015.

Dated: May 7, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11636 Filed 5–13–15; 8:45 am]

BILLING CODE 6717–01–P

[1] *Texas Eastern Transmission, LP,* 149 FERC ¶ 61,198 (2014).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2011–0997; FRL–9925–62–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Contractor Cumulative Claim and Reconciliation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Contractor Cumulative Claim and Reconciliation (Renewal)'' (EPA ICR No. 0246.12, OMB Control No. 2030–0016) 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.*). This is a proposed extension of the ICR, which is currently approved through May 31, 2015. Public comments were previously requested via the **Federal Register** (80 FR 6702) on February 6, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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: Additional comments may be submitted on or before June 15, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OARM–2011–0997, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Holly Hubbell, Policy Training and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–1091; fax number: 202–565–2473; email address: *hubbell.holly@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.*

Abstract: All contractors who have completed an EPA cost reimbursement type contract will be required to submit EPA Form 1900–10. EPA Form 1900–10 summarizes all costs incurred in performance of the contract and sets forth the final indirect rates. This form is reviewed by the contracting officer to determine the final costs reimbursable to the contractor. The Federal Acquisition Regulation (FAR) 52.216–7 states that the Government will pay only the costs determined to be allowable by the contracting officer in accordance with FAR 31.2. Furthermore, FAR 52.216–7 states that indirect cost rates shall be established for each fiscal year at the close of a contractor's fiscal year. EPA Form 1900–10 summarizes this information for the entire contract period and provides a basis for cost review by contracting, finance, and audit personnel. In addition, FAR 4.804–5 mandates that the office administering the contract shall ensure that the costs and indirect cost rates are settled.

Form Numbers: EPA Form 1900–10.

Respondents/affected entities: All contractors who have completed an EPA cost reimbursement type contract.

Respondent's obligation to respond: Mandatory (FAR 52.216–7).

Estimated number of respondents: 5 (total).

Frequency of response: Once, at the end of the contract.

Total estimated burden: 32 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,500.65 (per year), includes $60 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 48 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This is due to the decreased number of contracts closed in the past period.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–11657 Filed 5–13–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0168]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 13, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0168.

Title: Section 43.43, Reports of Proposed Changes in Depreciation Rates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 24 respondents; 24 responses.

Estimated Time per Response: 250 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154, 161, 201–205 and 218–220 of the Communications Act of 1934, as amended.

Total Annual Burden: 6,000 hours.

Total Annual Cost: $919,560.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. However, respondents

may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 43.43 establishes the reporting requirements for depreciation prescription purposes. Communication common carriers with annual operating revenues of $150.2 million or more that the Commission has found to be dominant must file information specified in Section 43.43 before making any change in depreciation rates applicable to their operating plant. Section 220 of the Communications Act of 1934, as amended, also allows the Commission, in its discretion, to prescribe the form of any and all accounts, records, and memoranda to be kept by carriers subject to the Act, including the accounts, records and memoranda of the movement of traffic, as well as receipts and expenditures of moneys. Carriers are required to file four summary exhibits along with the underlying data used to generate them, and must provide the depreciation factors (*i.e.,* life, salvage, curve shape, depreciation reserve) required to verify the calculation of the carrier's depreciation expenses and rates. Mid-sized carriers are no longer required to file theoretical reserve studies. Certain price cap incumbent LECs in certain instances may request a waiver of the depreciation rates.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–11666 Filed 5–13–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: FEDERAL ELECTION COMMISSION.

DATE AND TIME: *TUESDAY MAY 19, 2015 AT 10:00 a.m. AND THURSDAY, MAY 21, 2015 AT THE CONCLUSION OF THE OPEN MEETING.*

PLACE: 999 E STREET NW., WASHINGTON, DC.

STATUS: THIS MEETING WILL BE CLOSED TO THE PUBLIC.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 52 U.S.C. 30109 (formerly 2 U.S.C. 437g). Matters concerning participation in civil actions or proceedings or arbitration. Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2015–11832 Filed 5–12–15; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P3–15]

Petition of COSCO Container Lines Europe GMBH for an Exemption From 46 U.S.C. 40703; Notice of Filing and Request for Comments

Notice is hereby given that COSCO Container Lines Europe GmbH (''Petitioner''), has petitioned the Commission pursuant to 46 U.S.C. 40103 and 46 CFR 502.76 of the Commission's Rules of Practice and Procedure, for an exemption from 46 U.S.C. 40703, to permit Petitioner to lawfully reduce its tariff rates, charges, classifications, rules or regulations effective upon publication.

Petitioner is an ocean common carrier that intends to begin operating in the Europe-U.S. trade ''on or about June 1, 2015.'' Petitioner notes the exemption would allow it ''to compete with other carriers in providing tariff rate reductions in a timely and competitive manner.'' Petitioner is 100% owned by COSCO Container Lines Co., Ltd, a controlled carrier. Petitioner states that it is a controlled carrier as defined by the Shipping Act and subject to the requirements of 46 U.S.C. 40701–40706.

In order for the Commission to make a thorough evaluation of the exemption requested in the Petition, interested parties are requested to submit views or arguments in reply to the Petition no later than May 29, 2015. Replies shall be sent to the Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, or emailed to *Secretary@fmc.gov,* and be served on Petitioner, Howard S. Finkel, Executive Vice President, COSCO Container Lines Americas, Inc., 100 Lighting Way, Secaucus, NJ 07094.

Non-confidential filings may be submitted in hard copy to the Secretary at the above address or by email as a PDF attachment to *Secretary@fmc.gov.* Confidential filings should not be filed by email. A confidential filing must be filed with the Secretary in hard copy only, and be accompanied by a transmittal letter that identifies the filing as ''Confidential-Restricted'' and describes the nature and extent of the confidential treatment requested. The Commission will provide confidential treatment to the extent allowed by law for confidential submissions, or parts of submissions, for which confidentiality has been requested. When a confidential filing is submitted, there must also be submitted a public version of the fling. Such public filing version shall exclude confidential materials, and shall indicate on the cover page and on each affected page ''Confidential materials excluded.'' Public versions of confidential filings may be submitted by email.

The Petition will be posted on the Commission's Web site at *http://www.fmc.gov/reading/Petitions.asp.* Replies filed in response to the Petition will also be posted on the Commission's Web site at this location.

Karen V. Gregory,

Secretary.

[FR Doc. 2015–11631 Filed 5–13–15; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Commerce Bancorp, Inc.,* Duncan, Oklahoma; to acquire 100 percent of the voting shares of Anadarko Bank and Trust Company, Anadarko, Oklahoma.

Board of Governors of the Federal Reserve System, May 11, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–11639 Filed 5–13–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve 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 number.

DATES: Comments must be submitted on or before July 13, 2015.

ADDRESSES: You may submit comments, identified by *FR 3052* or *FR 3053,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Acting Clearance Officer—Mark Tokarski—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Supervisory and Regulatory Survey.

Agency form number: FR 3052.

OMB Number: 7100–0322.

Frequency: On occasion.[1]

Reporters: Financial businesses.

Estimated annual reporting hours: 60,000 hours.

Estimated average hours per response: 0.5 hours.

Number of respondents: 5,000.

General description of report: The FR 3052 is generally authorized under sections 2A and 12A of the Federal Reserve Act. Section 2A requires that the Board of Governors of the Federal Reserve System and the Federal Open Market Committee (FOMC) maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates (12 U.S.C. 225a). In addition, under section 12A of the Federal Reserve Act, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to the regulations' bearing upon the general credit situation of the country (12 U.S.C. 263). The authority of the Federal Reserve to collect economic data to carry out the requirements of these provisions is implicit. Accordingly, the Federal Reserve is authorized to use the FR 3052

[1] The Federal Reserve conducts the survey as needed up to 24 times per year.

by sections 2A and 12A of the Federal Reserve Act.

Additionally, depending upon the survey respondent, the information collection may be authorized under a more specific statute. Specifically, the Board is authorized to collect information from state member banks under section 9 of the Federal Reserve Act (12 U.S.C. 324); from bank holding companies (and their subsidiaries) under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); from Edge and agreement corporations under section 25 and 25A of the Federal Reserve Act (12 U.S.C. 602 and 625); from U.S. branches and agencies of foreign banks under section 7(c)(2) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(2)) and under section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)); from nonbank financial companies designed by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve under section 161 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5361); from foreign branches of member banks under sections 9 and 25 of the Federal Reserve Act (12 U.S.C. 325 and 602); and from U.S. nonbanking activities of foreign banking organizations covered under section 8 of the International Banking Act of 1978 (12 U.S.C. 3106).

In general, the obligation to respond to the FR 3052 is voluntary. However, with respect to collections of information from state member banks, bank holding companies (and their subsidiaries), Edge and agreement corporations, U.S. branches and agencies of foreign banks, nonbank financial companies designed by the FSOC for supervision by the Federal Reserve, foreign branches of member banks, and U.S. nonbanking activities of foreign banking organizations authorized under the specific statutes noted above, the Federal Reserve could make the obligation to respond mandatory.

The ability of the Federal Reserve to maintain the confidentiality of information provided by respondents to the FR 3052 surveys will have to be determined on a case by case basis depending on the type of information provided for a particular survey. In some instances, when a contractor collects the data, the data may not be considered an agency record, and if it is not considered an agency record, no issue of confidentiality will arise. In circumstances where the Board collects that data or the contractor provides the identifying information to the Board, such information could possibly be protected from Freedom of Information Act (FOIA) disclosure by FOIA exemptions 4 and 6. Exemption 4 protects from disclosure trade secrets and commercial or financial information, while Exemption 6 protects information ''the disclosure of which would constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(4) and (6)). If the survey is mandatory and is undertaken as part of the supervisory process, information could be protected under FOIA exemption 8, which protects information relating to examination reports (5 U.S.C. 552(b)(8)).

Abstract: The supervision and policy functions of Federal Reserve have occasionally needed to gather data on an ad-hoc basis from the banking and financial industries on their financial condition (outside of the standardized regulatory reporting process) and decisions that organizations have made to adjust to the changes in the economy. Further, the data may relate to a particular business activity that requires a more detailed presentation of the information than is available through regulatory reports such as the (FFIEC 031 and FFIEC 041; OMB No. 7100–0036) (FFIEC 002; OMB No. 7100–0032) (FR 2886b; OMB No. 7100–0086), and (FR Y–9C; OMB No. 7100–0128). These data may be particularly needed in times of critical economic or regulatory changes or when issues of immediate supervisory concern arise from Federal Reserve supervisory initiatives and working groups or requests from Board Members and the Congress. The Federal Reserve uses this event-driven survey to obtain information specifically tailored to the Federal Reserve's supervisory, regulatory, operational, and other responsibilities. The Federal Reserve conducts the survey as needed up to 24 times per year. The frequency and content of the questions depend on changing economic, regulatory, supervisory, or legislative developments.

2. *Report title:* Consumer Financial Stability Surveys.

Agency form number: FR 3053.

OMB Number: 7100–0323.

Frequency: On occasion.[2]

Reporters: Individuals, households, and financial and non-financial businesses.

Estimated annual reporting hours: Consumer Surveys: Quantitative and general surveys, 4,000 hours, Financial institution consumers, 1,000 hours, and Qualitative surveys, 600 hours; Financial institution survey: Financial institution staff, 150 hours; Stakeholder surveys: Stakeholder clientele, 500 hours and Stakeholder staff, 300 hours.

Estimated average hours per response: Consumer surveys: Quantitative and general surveys, 0.5 hours, Financial institution consumers, 0.5 hours and Qualitative surveys, 1.5 hours; Financial institution survey: Financial institution staff, 1.5 hours; Stakeholder surveys: Stakeholder clientele, 0.5 hours and Stakeholder staff, 1.5 hours.

Number of respondents: Consumer surveys: Quantitative and general surveys, 2000 respondents, Financial institution consumers, 500 respondents and Qualitative surveys, 100 respondents; Financial institution surveys: Financial institution staff, 25 respondents; Stakeholder surveys: Stakeholder clientele, 500 respondents and Stakeholder staff, 100 respondents.

General description of report: This information collection is generally voluntary (Federal Reserve Act, Sections 2A and 12A (12 U.S.C. 225a and 263)). In addition, depending upon the survey questions asked, the information collection may be authorized under one or more consumer protection statutes (Community Reinvestment Act, (12 U.S.C. 2905); Competitive Equality Banking Act, (12 U.S.C. 3806); Expedited Funds Availability Act, (12 U.S.C. 4008); Truth in Lending Act, (15 U.S.C. 1604); Fair Credit Reporting Act, (15 U.S.C. 1681s(e)); Equal Credit Opportunity Act, (15 U.S.C. 1691b); Electronic Funds Transfer Act, (15 U.S.C. 1693b and 1693o–2); Gramm-Leach-Bliley Act, (15 U.S.C. 6801(b)); and Flood Disaster Protections Act of 1973, (42 U.S.C. 4012a)). Additionally, depending on the survey respondent, the information collection may be authorized under a more specific statute (Federal Reserve Act, Section 9, 25, and 25A (12 U.S.C. 324, 602, and 625); Bank Holding Company Act, Section 5(c) (12 U.S.C. 1844(c)); International Banking Act of 1978, Section 7(c)(2) (12 U.S.C. 3105(c)(2)); and Federal Deposit Insurance Act, Section 7(a) (12 U.S.C. 1817(a))). However, with respect to collections of information from state member banks, bank holding companies (and their subsidiaries), Edge and agreement corporations, and U.S. branches and agencies of foreign banks authorized under the specific statutes noted above, the Federal Reserve could make the obligation to respond mandatory. In circumstances where the Board collects that data or the contractor provides the identifying information to the Board, such information could possibly be protected from Freedom of Information Act (FOIA) disclosure by FOIA exemptions 4 and 6 (5 U.S.C. 552(b)(4) and (6)).

[2] The Federal Reserve conducts the survey as needed up to 20 times per year.

Abstract: Board staff uses this event-driven survey to obtain information specifically tailored to the Federal Reserve's supervisory, regulatory, operational, informational, and other responsibilities. Board staff is authorized to conduct the FR 3053 up to 20 times per year, although the survey may not be conducted that frequently. The frequency and content of the questions depends on changing economic, regulatory, or legislative developments as well as changes in the financial services industry itself. Respondents comprise individuals, households, and financial and non-financial businesses. The annual burden is estimated to be 6,550 hours, based on twenty surveys: Three quarterly consumer-focused, one quarterly financial institution study, and two semi-annual stakeholder-focused surveys. The surveys are used to gather qualitative and quantitative information directly from: Consumers (consumer surveys), financial institutions and other financial companies offering consumer financial products and services (financial institution survey), and other stakeholders, such as state or local agencies, community development organizations, brokers, appraisers, settlement agents, software vendors, and consumer groups (stakeholder surveys).

Board of Governors of the Federal Reserve System, May 11, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–11667 Filed 5–13–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Make-Up Meetings of the Community Preventive Services Task Force (Task Force)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the next meetings of the Community Preventive Services Task Force (Task Force). These meetings will be make-up sessions for the February 25–26, 2015 Task Force Meeting, which was cancelled due to inclement weather.

The Task Force is an independent, nonpartisan, nonfederal, and unpaid panel. Its members represent a broad range of research, practice, and policy expertise in prevention, wellness, health promotion, and public health, and are appointed by the CDC Director. The Task Force was convened in 1996 by the Department of Health and Human Services (HHS) to identify community preventive programs, services, and policies that increase healthy longevity, save lives and dollars and improve Americans' quality of life. CDC is mandated to provide ongoing administrative, research, and technical support for the operations of the Task Force. During its meetings, the Task Force considers the findings of systematic reviews on existing research, and issues recommendations. Task Force recommendations provide information about evidence-based options that decision makers and stakeholders can consider when determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

DATES: The meetings will be held on Tuesday, May 19, 2015 from 3 p.m. to 5 p.m. Eastern Time (ET) and Monday, June 1, 2015 from 3 p.m. to 5 p.m. ET.

ADDRESSES: Due to the proximity to the June Task Force Meeting, which will be held in Atlanta, these make-up Task Force Meeting sessions will be held via Webcast and Conference Call. The Webcast will be broadcast from the Centers for Disease Control and Prevention's facility at 1600 Clifton Road, Atlanta, GA 30333. This will only be produced as a Webcast and Conference Call, therefore no accommodations will be provided for in-person participation. There will be a 100 line participation limit on the Conference Call.

Meeting Accessibility: This meeting is available to the public via Webcast and Conference Call. Individuals must RSVP by May 15, 2015 to receive the URL for the presentations via Webcast on the Internet. This includes both audio and video for the presentations. The audio only option will be presented via conference call with 100 lines available. To access the audio via Conference Call, dial 1–877–457–5728 and enter participation code 5412084 when prompted to do so.

FOR FURTHER INFORMATION CONTACT: For more information and to RSVP, contact Onslow Smith, The Community Guide Branch; Division of Public Health Information Dissemination; Center for Surveillance, Epidemiology and Laboratory Services; Office of Public Health Scientific Services; Centers for Disease Control and Prevention, 1600 Clifton Road, MS–E–69, Atlanta, GA 30333, phone: (404) 498–6778, email: *CPSTF@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of the meeting is for the Task Force to consider the findings of systematic reviews and issue findings and recommendations. Task Force recommendations provide information about evidence-based options that decision makers and stakeholders can consider when determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents.

Matters to be discussed: Topics are subject to change.

May 19th

- Cardiovascular Disease
- Vaccination

June 1st

- Cardiovascular Disease
- Health Equity
- Task Force Prioritization

Dated: May 8, 2015.

Ron A. Otten,

Acting Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2015–11617 Filed 5–11–15; 11:15 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Notice of Intent To Award a Single Source Non-Competing Program Expansion Supplement to the National Falls Prevention Resource Center

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces its intent to award a single-source program expansion supplement to expand the work of the National Falls Prevention Resource Center (NFPRC). The goals of the NFPRC are to: Increase public education about the risks of falls and how to prevent them; and to support and stimulate the implementation and dissemination of evidence-based community programs and strategies that have been proven to reduce the incidence of falls among seniors. The purpose of this notice is to award

supplemental funds to expand work already underway by The National Council on Aging, the grantee who serves as the NFPRC.

DATES: May 14, 2015.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program expansion supplement, contact Shannon Skowronski, U.S. Department of Health and Human Services, Administration for Community Living, Office of Nutrition and Health Promotion Programs, One Massachusetts Avenue NW., Washington, DC 20001; telephone (202) 357–0149; email *shannon.skowronski@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Program Name: National Falls Prevention Resource Center.

Award Amount: $300,000.

Project Period: The award will be issued for a project period to run concurrently with the existing grantee's budget period.

Award Type: Cooperative Agreement.

Statutory Authority: The statutory authority for this funding is contained in the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113–235, Div. G., Title II, § 219(a); Public Health Service Act, 42 U.S.C. 300u–2 (Community Programs) and 300u–3 (Information Programs); and the Patient Protection and Affordable Care Act, 42 U.S.C. 300u–11 (Prevention and Public Health Fund).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.761.

Program Description: The Administration on Aging, within the U.S. Administration for Community Living, has been funding the National Falls Prevention Resource Center (NFPRC) since 2014. The NFPRC works to increase public education about the risks of falls and how to prevent them, and supports and stimulates the implementation and dissemination of evidence-based community programs and strategies that have been proven to reduce the incidence of falls among seniors. The purpose of the NFPRC is to help provide consumers and professionals with the resources they need to help prevent falls and decrease falls risk among older adults and adults with disabilities. The NFPRC provides a variety of resources to the field and to ACL/AoA falls prevention grantees to support the broader implementation, dissemination, and sustainability of evidence-based falls prevention programs. Examples of resources include fact sheets, issue briefs, webinars, program descriptions, best practices, and consultation of national experts on falls prevention. The NFPRC also increases public awareness and educates consumers about falls as a preventable public health problem through consumer materials, such as the ''6 Steps to Prevent a Fall'' infographic and the facilitation of the annual Falls Prevention Awareness Day across the country. Professional education is provided through the NFPRC's Web site, collaboration with state falls prevention coalitions, partnerships with professional associations, presentations at professional conferences, and NFPRC-conducted meetings.

Justification: The purpose of this Supplement is to expand the National Falls Prevention Resource Center (NFPRC) activities in the following ways:

(1) Increase coordination and support for evidence-based falls prevention programs. NFPRC's current activities include providing support to the public and aging services network, including support to 14 two-year forward-funded projects that ACL awarded in FY2014 under HHS–2014–ACL–AOA–FP–0083 (*''Evidence-Based Falls Prevention Programs Financed Solely by 2014 Prevention and Public Health Funds (PPHF–2014)''*). When the NFPRC grant was initially awarded, ACL did not know if it would receive additional funding for more falls prevention grants. Subsequently, ACL received $5 million in FY2015 funds and now anticipates awarding 10 to 14 additional grants. The NFPRC will extend its efforts to encompass activities and support involving these additional grantees, which will require the NFPRC to secure additional resources, including staffing. In addition, the NFPRC would be able to expand the scope of its planned FY2016 meeting, which will focus on developing successful strategies to implement and sustain falls prevention programs, as well as provide opportunities for networking among evidence-based program implementers.

(2) Follow-up from the National Falls Prevention Summit. The National Council on Aging hosted a National Falls Prevention Summit on April 30th, 2015. The purpose of this Summit was to update the 2005 Falls Free® National Action Plan, and to engage key stakeholders in developing steps to implement the revised Plan. The NFPRC will provide Summit follow-up to help move these efforts forward—working with national, state, and community partners to help prevent falls among older adults and adults with disabilities across the Nation.

Dated: May 6, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–11516 Filed 5–13–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

2015 International Society for Pharmaceutical Engineering/Food and Drug Administration/Product Quality Research Institute Quality Manufacturing Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research, in cosponsorship with the International Society for Pharmaceutical Engineering (ISPE), is announcing a meeting entitled ''2015 ISPE/FDA/PQRI Quality Manufacturing Conference,'' formerly known as the annually occurring ''ISPE/FDA Current Good Manufacturing Practices Conference.'' The purpose of the meeting is to discuss the quality of global pharmaceutical manufacturing and the combined efforts of industry leaders and regulators to modernize manufacturing facilities and processes to ensure quality and compliance.

DATES: The meeting will be held on June 1 to 3, 2015, beginning at 7:30 a.m. on June 1 and ending at 4 p.m. on June 3.

ADDRESSES: The meeting will be held at The Mayflower Renaissance, 1127 Connecticut Ave. NW., Washington, DC 20036. The hotel's phone number is 202–347–3000.

FOR FURTHER INFORMATION CONTACT: John Bournas, President, International Society for Pharmaceutical Engineering, 600 North Westshore Blvd., Suite 900, Tampa, FL 33609, telephone: 1–813–960–2105, FAX: 1–813–264–2816, email: *ASK@ispe.org*.

SUPPLEMENTARY INFORMATION:

I. Background

The International Society for Pharmaceutical Engineering is a not-for-profit international association of more than 20,000 engineers, scientists, manufacturing, quality and company executives, their suppliers, and regulatory agencies involved in the development, manufacture, quality control, and regulation of

pharmaceuticals and related products. The goal of the conference is to ensure widespread opportunities for attendees to learn about important and critical issues that intersect with pharmaceutical manufacturing quality and regulatory topics that impact manufacturers, suppliers, and regulatory health authorities.

II. Registration

There is a registration fee to attend this meeting. The registration fee is charged to help defray the costs of conference sessions and presentations, facilities, materials, and food. Seats are limited, and registration will be on a first-come, first-served basis.

To register, please complete registration online at *http://www.ispe.org/2015-quality-manufacturing-conference/fees-and-registration.* (FDA has verified the Web address, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) The costs of registration for the different categories of attendees are as follows:

Category	Cost
ISPE Members	$2,095
Nonmembers	2,475
Government	700

III. Accommodations

Attendees are responsible for their own hotel accommodations. Attendees making reservations at The Mayflower Renaissance, Washington DC, may check for the availability of a reduced rate by mentioning ISPE when making their reservation.

Dated: May 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11620 Filed 5–13–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–1349]

Electronic Study Data Submission; Data Standards; Support for the Logical Observation Identifiers Names and Codes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is encouraging sponsors and applicants to provide Logical Observation Identifiers Names and Codes (LOINC) codes (available at *http://loinc.org/*) for clinical laboratory test results in investigational study data provided in regulatory submissions submitted to the Center for Drug Evaluation and Research and to the Center for Biologics Evaluation and Research. LOINC code is defined as electronic messages for laboratory test results and clinical observations. The decision to adopt LOINC for lab test results is part of a larger FDA effort to align the use of data standards for clinical research with ongoing nationwide health information technology initiatives. FDA invites public comment on appropriate steps the Agency could take to promote the use and utility of LOINC-coded clinical data submitted to the Agency. The LOINC common terminology will be listed in the FDA Data Standards Catalog that is posted to FDA's Study Data Standards Resources Web page at *http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm.*

DATES: Although you can comment on this notice at any time, to ensure that the Agency considers your comments submit either electronic or written comments by June 29, 2015.

ADDRESSES: Submit written requests for single copies of the documents to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit electronic comments 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: Ron Fitzmartin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1192, Silver Spring, MD 20993–002, 301–796–5333, *ronald.fitzmartin@fda.hhs.gov*, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

LOINC is a clinical terminology housed by the Regenstrief Institute, a nonprofit medical research organization associated with Indiana University (available at *http://www.regenstrief.org/*). LOINC was initiated in 1994 as a response to the demand for electronic movement of clinical data from laboratories that produce the data to consumers of clinical data. LOINC codes are universal identifiers for laboratory and other clinical observations that enable semantically interoperable clinical data exchange. The purpose of LOINC is to facilitate the exchange and pooling of clinical data for clinical care, outcomes management, and research.

The laboratory portion of the LOINC database contains the categories of chemistry, hematology, serology, microbiology (including parasitology and virology), toxicology, and more. The clinical portion of the LOINC database includes entries for vital signs, hemodynamics, intake/output, EKG, obstetric ultrasound, cardiac echo, urologic imaging, gastroendoscopic procedures, and selected survey instruments.

FDA is now encouraging sponsors and applicants to provide LOINC codes for laboratory test data in investigational studies provided in regulatory submissions (*e.g.,* investigational new drug applications (INDs), new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics license applications (BLAs)) when those LOINC codes are available (*e.g.,* from the clinical laboratory that performed the test). FDA supports LOINC-coded laboratory test results because: (1) LOINC is widely used among clinical laboratories, (2) LOINC-coded lab data make the information easier to understand and analyze, and (3) the currently supported exchange standard for laboratory test results in clinical trials, the Study Data Tabulation Model (available at *http://www.cdisc.org/sdtm)* already supports the exchange of LOINC codes. FDA's decision to adopt LOINC for lab test results is part of a larger FDA effort to align the use of data standards for clinical research with ongoing nationwide health information technology initiatives.

FDA recognizes that there are additional steps the Agency could take to promote the use and utility of LOINC-coded clinical data submitted to the Agency. FDA invites public comment on what those additional steps should be, along with a suggested sequence and timing of those steps. For example, the Agency recognizes that the high level of granularity inherent in LOINC has

presented coding challenges and that these challenges have led to the creation of subsets of LOINC to help facilitate coding.

- Should FDA identify a LOINC subset for its use case?
- If yes, should FDA create its own subset or leverage existing subsets?
- Which LOINC subsets should FDA consider?
- What steps can FDA take to minimize the burden to sponsors and applicants in adopting LOINC within their organizations to support regulatory submissions?

II. Comments

Interested persons may submit either electronic comments to *http://www.regulations.gov* or written comments regarding this notice to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: May 6, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11596 Filed 5–13–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0509]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Dispute Resolution Procedures for Science Based Decisions on Products Regulated by the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Dispute Resolution Procedures for Science Based Decisions on Products Regulated by the Center for Veterinary Medicine'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On February 18, 2015, the Agency submitted a proposed collection of information entitled, ''Dispute Resolution Procedures for Science Based Decisions on Products Regulated by the Center for Veterinary Medicine'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0566. The approval expires on April 30, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: May 6, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11608 Filed 5–13–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1491]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey of Pharmacists and Patients; Variations in the Physical Characteristics of Generic Drug Pills and Patients' Perceptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 15, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910-New and title ''Survey of Pharmacists and Patients; Variations in the Physical Characteristics of Generic Drug Pills and Patients' Perceptions.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Survey of Pharmacists and Patients; Variations in the Physical Characteristics of Generic Drug Pills and Patients' Perceptions (OMB Control No. 0910—NEW)

Generic drugs make up approximately 85 percent of all human prescription drugs prescribed in the United States. While generic drugs are required to be pharmaceutically equivalent and bioequivalent to their brand-name counterparts, generics made by different manufacturers may differ substantially from their brand-name therapeutic equivalents and from each other in their physical appearance (*e.g.,* color, shape, or size of pills). When pharmacists switch generic drug suppliers, patients refilling their generic prescriptions may therefore experience changes in their drugs' appearances. These changes may result in patient confusion and concerns about the safety and effectiveness of the generic drug products. Studies indicate that patients are more likely to stop taking their generic medications when they experience a change in their drugs' physical appearances, leading to harmful clinical and public health consequences as well as increased health care costs from avoidable morbidity and mortality.

To provide additional information that may help guide regulatory policy or pharmacy business practices, we intend to conduct surveys of pharmacists and patients about their perceptions about and experiences with generic drug product pill appearance change. These surveys are intended to further our understanding of the relationship between changes in pill appearance and non-adherence to prescribed therapeutic regimens. The surveys may enable us to investigate factors that may explain the association between changes in pill

appearance and non-adherence, including which factors could be modified to improve the safe and effective use of generic drugs.

We intend to survey a national cohort of pharmacists about their experiences with dispensing generic drug pills that differ in appearance from previous refills of the same medication and dosage level (*e.g.,* when pharmacies switch generic suppliers). A stratified, random sample of U.S.-licensed pharmacists will be obtained based on a master list from KM Lists. The target sample includes pharmacists with active licenses who practice in traditional community pharmacy settings and will be proportionally allocated across the U.S. in relation to the number of pharmacists in each state. Based on an 11 percent undeliverable rate and a 52 percent response rate, 2,161 questionnaires will be mailed to pharmacists to obtain the 1,000 responses required for adequate statistical power. The pharmacists' survey will consist of a mailed questionnaire rather than a telephone survey or an email survey. Prior experience conducting surveys has shown that it is easier to guarantee respondent anonymity using an impersonal, mailed questionnaire with no individual identifying information. The pharmacists will be asked about the frequency with which their pharmacy changes suppliers that lead to variations in the appearance of the generic drugs that they dispense, as well as strategies they use with patients to address the transition to pills that have a different appearance (*e.g.,* alert stickers on pill bottles, verbal warnings, and other strategies). They will also be asked about patient responses to changes in pill appearance, including what types of appearance changes seem to affect patients most often (shape/color/size), how often patients report confusion about pill appearance, and how often patients ultimately refuse to accept the new product. Participation is expected to take approximately 20 minutes.

We also intend to survey two different patient samples using two methodologies. The first is a telephone survey of patients who are 50 years and older and who take one or more generic medications for at least one of the following chronic conditions: Epilepsy, diabetes, hypertension, hyperlipidemia, depression, and HIV. The telephone survey will be generalizable and will consist of well-defined methods to minimize sampling bias such as use of random phone numbers for both landlines and mobile phones, as well as small-batch sampling to ensure a high response rate that meets demographic diversity goals. For the second patient survey, patients will be selected from a proprietary research database of commercially insured patients containing medical and pharmacy claims linked to health insurance enrollment information. A nationally representative sample of patients with at least one chronic condition and who experienced a change in physical appearance of a generic pill will be identified by the research team using medical and pharmacy claims data. Both patient surveys will consist of questions covering topics similar to those asked in the survey of pharmacists and is intended to provide answers to the same topic areas from patients' perspectives. As before, topic areas will include beliefs about generic drugs, outcomes related to changes in generic drug pill appearance, and strategies used by pharmacists or doctors to alert patients to the possibility of changes in appearance. Participation is expected to take approximately 20 minutes.

In the **Federal Register** of October 15, 2014 (79 FR 61872), FDA published a 60-day notice requesting public comment on the proposed collection of information. Comments submitted raised several issues pertaining to the proposed collection of information. We summarize the comments and provide our responses below:

(Comment 1) Two comments expressed concerns related to trade dress protection issues, noting that the requirement that generic products differ in appearance from the Reference Listed Drug is well established in case law. A pill's physical appearance can qualify as trade dress, protected under the Lanham Act (Pub. L. 79–489), which functions to distinguish between products from different manufacturers. A drug's physical appearance can also be considered a protected form of non-verbal expression under the First Amendment. If required to change the appearance of their medications, the generic industry would face additional development costs.

(Response) The purpose of these surveys is to gather information on the awareness of patients and pharmacists about changes in the appearance of medications, the frequency with which changes in appearance occurs, strategies that pharmacists use to inform patients when the appearance of their medications changes, and the outcomes associated with these strategies. The results of the surveys will be used to inform the development of patient education about differences in pill appearance and inform the development of education for pharmacists on strategies to counsel patients when the appearance of their medications changes. The purpose of these surveys is not to reverse existing legal precedents, require the generic drug industry change the appearance of their medications, or support the infringement of intellectual property, First Amendment, or any other legally protected interests.

(Comment 2) One comment mentioned that the term ''pill'' is used in the **Federal Register** notice to describe oral solid dosage forms such as tablets and capsules, but is defined by Merriam-Webster much more narrowly to exclude tablets and capsules, which has the potential to create confusion.

(Response) Because the FR notice is seeking opinions from the public, we used language accessible to the general public. To avoid confusion, the word ''pill'' is defined in the introduction of each survey instrument to clarify its meaning, with the statement that the word ''pill'' includes both tablet and capsule dosage forms.

(Comment 3) One comment mentioned that the survey findings may be used by FDA to guide pharmacy business practice, which is the jurisdiction of the State Boards of Pharmacy.

(Response) As stated earlier, the purpose of these surveys is to gather information on the awareness of patients about changes in the appearance of their medications, the frequency with which changes in appearance occurs, strategies that pharmacists use to inform patients when the appearance of their medications changes, and the outcomes associated with these strategies. The results of the surveys will be used to inform the development of patient education about differences in pill appearance and inform the development of education for pharmacists on strategies to counsel patients when the appearance of their medications changes. FDA does not intend to, itself, guide pharmacy business practices.

(Comment 4) One comment expressed concern that confidential patient information from an insurance database will be identified and shared with Federal Government employees, which may violate HIPAA regulations.

(Response) These surveys received approval from the Institutional Review Board (IRB) at the academic medical center where the survey is being conducted, which was accepted by FDA's IRB (Research In Human Subject Committee). IRB approval ensures compliance with human subjects' protection laws, including HIPAA. No FDA personnel will have access to any identifiable patient information.

(Comment 5) One comment suggested that instead of conducting the study, FDA should data mine an internal source of data (product complaints received from pharmaceutical companies, healthcare providers, and consumers) to gather information on potential confusion and medication mistakes.

(Response) The proposed study focuses on patient and pharmacist experiences and outcomes associated with changes in pill appearance, a topic of which patient confusion and medication mistakes are only a part. Although some medication mistakes and patient confusion data may be captured in our internal database (FDA's Adverse Event Reporting System), the specific data sought from the proposed study do not exist in this database.

(Comment 6) One comment suggested that if the information on potential confusion and medication mistakes cannot be found in current databases, FDA should request that pharmacy school students conduct this study and publish results in a peer-reviewed journal to assure transparency and reduce government spending.

(Response) High-quality surveys require substantial resources that would likely not be available to pharmacy students for class projects. These surveys are being conducted by an academic medical institution that has expertise in conducting surveys of patients and health care providers, which will provide high-quality and valid data and assure transparency. The results will be published in a peer-reviewed journal(s) and will be made publicly available.

(Comment 7) One comment mentioned that these surveys will collect data on pharmacist and patient perceptions, which may not correlate to actual use data and thus may not provide meaningful information on safe and effective use of generic drugs or yield substantial evidence to support adoption of any regulatory policies. The comment noted that further investigations will be needed to understand how pharmacist and patient perceptions translate to actual practices and effects, and encouraged FDA to consider comments to Docket No. 2013–N–1434 in considering what further work will be needed and the level of evidence needed to support any regulatory policy changes.

(Response) These surveys include questions on patient and pharmacist perceptions, as well as their actual experiences and behaviors as they relate to generic drugs and changes in drug appearance. The survey findings will be used to inform the development of patient education about differences in pill appearance and inform the development of education for pharmacists on strategies to counsel patients when the appearance of their medications changes.

(Comment 8) One comment noted that if this study is conducted, the surveys should be carefully crafted to collect useful data using validated, well-developed methodology and assumptions. The comment requested the opportunity to review the proposed surveys and to submit additional survey questions.

(Response) Well-established survey methods are being used in the development and conducting of this survey. The survey questions were carefully crafted according to published guidelines for survey question development (Refs. 1 & 2) and were further refined by an expert panel that included individuals with pharmacy-related professional backgrounds and patient representatives. The survey instruments will undergo cognitive testing and formal pre-testing to ensure questions are clear and answerable, and that study results are valid and useful. A copy of the draft surveys have been provided to the commenter.

(Comment 9) One comment noted that the variations in the physical appearance of drug products may help pharmacists and patients avoid confusion, facilitate detection of counterfeit drug products, and serve pharmacovigilance purposes by providing information about the source of a specific product. Variation in pill appearance can also serve to notify patients that the source of their medication has changed. FDA should acknowledge the ways in which differences in pill appearance are beneficial when determining whether and how to conduct the survey.

(Response) The focus of these surveys is on identifying patient and pharmacist concerns and problems related to changes in pill appearance, with the goal of informing the development of future patient and provider educational interventions and programs to address identified problems. However, it is acknowledged that changes in the physical appearance of medications could have both negative and beneficial effects. Therefore, questions have been added to gauge how changes in pill appearance may benefit pharmacists and patients.

(Comment 10) One comment commended FDA for planning this study. The commenter was also pleased that FDA plans to conduct two separate patient surveys to ensure that a broad and relevant patient experience is reflected in the results.

(Response) We thank this commenter for the support of our study and agree that conducting two separate patient surveys will improve the validity and generalizability of the results.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED REPORTING BURDEN [1]

Surveys of pharmacists and patients on variations in the physical characteristics of generic drug pills and patients' perceptions	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total Hours
Pharmacist surveys mailed [2]	2,161				
Pharmacist pretests	9	1	9	0.333 (20 minutes)	3
Pharmacist survey completes	1,000	1	1,000	0.3 (18 minutes)	300
Patient #1 survey calls	5,000				
Patient #1 surveys screened	3,330	1	3,330	0.033 (2 minutes)	111
Patient #1 surveys eligible	1,200				
Patient #1 survey pretests	9	1	9	0.333 (20 minutes)	3
Patient #1 survey completes	1,000	1	1,000	0.3 (18 minutes)	300
Patient #2 surveys mailed [2]	2,000				

TABLE 1—ESTIMATED REPORTING BURDEN [1]—Continued

Surveys of pharmacists and patients on variations in the physical characteristics of generic drug pills and patients' perceptions	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total Hours
Survey of patients #2	1,000	1	1,000	0.3 (18 minutes)	300
Total					1,017

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Eligibility is determined prior to mailing the surveys; screening is not required.

References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.*

1. Woodward, C.A., ''Questionnaire Construction and Question Writing for Research in Medical Education,'' *Medical Education,* 22, pp. 345–363 (1988).
2. Fitzpatrick, R., ''Surveys of Patient Satisfaction: II—Designing a Questionnaire and Conducting a Survey,'' *British Medical Journal,* 302(6785), pp. 1129–1132 (1991).

Dated: May 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11623 Filed 5–13–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1031]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; FDA Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''FDA Recall Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On February 27, 2015, the Agency submitted a proposed collection of information entitled, ''FDA Recall Regulations'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0249. The approval expires on March 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: May 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11624 Filed 5–13–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1076]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry: Formal Dispute Resolution; Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Guidance for Industry: Formal Dispute Resolution; Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On January 8, 2015, the Agency submitted a proposed collection of information entitled, ''Guidance for Industry: Formal Dispute Resolution; Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0563. The approval expires on April 30, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: May 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11609 Filed 5–13–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2015–0020]

The U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee (UFAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Public Committee Meeting.

SUMMARY: The U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee (UFAC) will meet on Tuesday, June 2, 2015, in Washington,

DC. The meeting will be open to the public.

DATES: The UFAC will meet on Tuesday, June 2, 2015, from 1:00 p.m. to 2:30 p.m. EST. Please note that the meeting is scheduled for one and a half hours and that the meeting may close early if the committee completes its business.

Pre-Registration: Meeting participants may attend either in person or via webinar after pre-registering using a method indicated below:

—For members of the public who plan to attend the meeting in person, please register either online at *https://apps.cbp.gov/te_reg/index.asp?w=43,* by email to *tradeevents@dhs.gov;* or by fax to (202) 325–4290 by 5:00 p.m. EST on May 29, 2015.

—For members of the public who plan to participate via webinar, please register online at *https://apps.cbp.gov/te_reg/index.asp?w=44,* by 5:00 p.m. EST on May 29, 2015.

Feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later require cancellation, please do so in advance of the meeting by accessing one (1) of the following links: *https://apps.cbp.gov/te_reg/cancel.asp?w=43* to cancel an in person registration, or *https://apps.cbp.gov/te_reg/cancel.asp?w=44* to cancel a webinar registration.

ADDRESSES: The meeting will be held at the U.S. International Trade Commission, 500 E Street SW., Courtroom A, Washington, DC 20436.

All visitors to the International Trade Commission Building must show a state-issued ID or Passport to proceed through the security checkpoint for admittance to the building. There will be signage posted directing visitors to the location of Courtroom A.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at (202) 344–1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee prior to the formulation of recommendations as listed in the ''Agenda'' section below.

Comments must be submitted in writing no later than May 25, 2015, and must be identified by Docket No. USCBP–2015–0020, and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: Tradeevents@dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. Do not submit personal information to this docket.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2015–0020. To submit a comment, see the link on the Regulations.gov Web site for ''How do I submit a comment?'' located on the right hand side of the main site page.

There will be two (2) public comment periods held during the meeting on June 2, 2015. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment periods for speakers may end before the times indicated on the schedule that is posted on the CBP Web page, *http://www.cbp.gov/trade/stakeholder-engagement/user-fee-advisory-committee*.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), the Department of Homeland Security (DHS) hereby announces the meeting of the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee (UFAC). The UFAC is tasked with providing advice to the Secretary of Homeland Security (DHS) through the Commissioner of U.S. Customs and Border Protection (CBP) on matters related to the performance of airport and seaport inspections coinciding with the assessment of an agriculture, customs, or immigration user fee. The UFAC meeting will be held on the date and time specified above.

Agenda

The UFAC will meet to discuss and report the work completed by the Financial Assessment and Options Subcommittee and the Processes Subcommittee:

1. The Financial Assessment and Options Subcommittee will discuss an overview of current worldwide user fees being paid by industry, and mapping how industry collects and transmits user fees to U.S. Customs and Border Protection (CBP).

2. The Processes Subcommittee will discuss developing advice that would enhance U.S. Customs and Border Protection (CBP) operational efficiencies.

Dated: May 8, 2015.

Maria Luisa Boyce,

Senior Advisor for Private Sector Engagement, Office of Trade Relations, U.S. Customs and Border Protection.

[FR Doc. 2015–11619 Filed 5–13–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0022]

Agency Information Collection Activities: Post-Award Contract Information

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: 60-Day Notice and request for comments; Extension without change, 1600–0003.

SUMMARY: The Department of Homeland Security, Office of the Chief Procurement Officer, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until July 13, 2015. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0022, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: dhs.pra@hq.dhs.gov* Please include docket number DHS- 2015–0022 in the subject line of the message.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) collects information, when necessary, in administering public contracts for supplies and services. The information is used to determine compliance with contract terms placed in the contract as authorized by the Federal Property and Administrative Services Act (41 U.S.C. 251 *et seq.*), the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1), and the Homeland Security Acquisition Regulation (HSAR) (48 CFR Chapter 30). Examples of information DHS contracting officers normally collect when administering contracts include notices of changes in key personnel, invoices, subcontracting reports, and evidence of compliance with hazardous removal requirements. Examples of collections under the HSAR include: 3052.204–71 Contractor employee access, 3052.205–70 Advertisements, Publicizing Awards, and Releases, 3052.209–72 Organizational Conflict of Interest, 3052.209–75 Prohibited Financial Interests for Lead System Integrators, 3052.215–70 Key personnel or facilities, 3052.219–70 Small Business subcontracting plan reporting, 3052.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.

The information requested is used by the Government's contracting officers and other acquisition personnel, including technical and legal staff, for various reasons such as determining the suitability of contractor personnel accessing DHS facilities; to ensure no organizational conflicts of interest exist during the performance of contracts; to ensure the contractor maintains applicable licenses and permits for the removal and disposal of hazardous materials; and to otherwise ensure firms are performing in the Government's best interest. Failure to collect this information would adversely affect the quality of products and services DHS receives from contractors. For example, potentially, contractors who are lead system integrators could acquire direct financial interests in major systems the contractors are contracted to procure, which would compromise the integrity of acquisitions for the Department. In addition, contractors who own, control or operate a business providing protective guard services could possess felony convictions during the performance of contracts, putting the Department at risk. Furthermore, contractors could change key personnel during the performance of contracts and use less experienced or less qualified personnel to reduce costs, which would adversely affect DHS's fulfillment of its mission requirements.

Many sources of the requested information use automated word processing systems, databases, spreadsheets, project management and other commercial software to facilitate preparation of material to be submitted. With Government wide implementation of e-Government initiatives, it is commonplace within many of DHS's Components for submissions to be electronic.

Disclosure/non-disclosure of information is handled in accordance with the Freedom of Information Act, other disclosure statutes, and Federal and agency acquisition regulations.

Based upon definitive contract award data reported by DHS and its Components to the Federal Procurement Data System (FPDS) for Fiscal Year 2014. No program changes occurred, however the burden was adjusted to reflect an increase in the number of respondents within DHS for Fiscal Year 2014.

The prior information collection request for OMB No. 1600–0003 was approved through August 31, 2015 by OMB. This collection will be submitted to OMB for review to request an approval to extend the expiration date of the collection. There are no proposed changes to the information being collected, instructions, frequency of the collection or the use of the information being collected.

The Office of Management and Budget is particularly interested in comments which:

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 submissions of responses.

Analysis

Agency: Office of the Chief Procurement Officer, DHS.

Title: Agency Information Collection Activities: Post-Award Contract Information.

OMB Number: 1600–0003.

Frequency: On occasion.

Affected Public: Private Sector.

Number of Respondents: 11,885.

Estimated Time per Respondent: 14 hours.

Total Burden Hours: 499,170 hours.

Dated: May 7, 2015.

Carlene C. Ileto,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2015–11695 Filed 5–13–15; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N083; FXES11130800000–154–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for 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 species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before June 15, 2015.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek

review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–54716A

Applicant: Christine Harvey, San Diego, California

The applicant requests a permit amendment to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with survey and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–034101

Applicant: Naval Facilities Engineering Command, Southwest, San Diego, California

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, measure, attach radio transmitters, conduct radio telemetry, mark by PIT tag, and release) the arroyo toad (arroyo southwestern) (*Anaxyrus californicus*) in conjunction with surveys, research, and population monitoring activities at Naval Weapons Station Seal Beach Detachment Fallbrook in San Diego County, California, for the purpose of enhancing the species' survival.

Permit No. TE–022230

Applicant: Jeff W. Kidd, Murrieta, California

The applicant requests a permit amendment to take (harass by survey, locate and monitor nests, and perform avian predator management activities) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with population and breeding studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–809232

Applicant: BIO–WEST Incorporated, Logan, Utah

The applicant requests a permit amendment to take (capture, mark, tag, measure, and release) the Virgin River chub (*Gila robusta seminuda*) and woundfin (*Plagopterus argentissimus*); take (capture, mark, tag, measure, and release or collect) the razorback sucker (*Xyrauchen texanus*), bonytail chub (*Gila elegans*), and humpback chub (*Gila cypha*); take (capture, handle, measure, and release) the Pahranagat roundtail chub (*Gila robusta jordani*), Pahrump poolfish (*Empetrichthys latos*), White River springfish (*Crenichthys baileyi baileyi*), Hiko White River springfish (*Crenichthys baileyi grandis*), and White River spinedace (*Lepidomeda albivallis*); take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); and remove/reduce to possession the *Nitrophila mohavensis* (Amargosa niterwort) in conjunction with survey, research, genetic analysis, and population monitoring activities in Arizona, California, Nevada, and Utah, for the purpose of enhancing the species' survival.

Permit No. TE–118641

Applicant: Jodi McGraw, Corralitos, California

The applicant requests a permit renewal to take (survey by pursuit, live-capture, handle, release, and monitor) the Mount Hermon June beetle (*Polyphylla barbata*) and take (survey by pursuit, live-capture, handle, release, and monitor) the Zayante band-winged grasshopper (*Trimerotropis infantilis*) in conjunction with surveys, research, and restoration activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–063230

Applicant: Jim Rocks, San Diego, California

The applicant requests a permit to take (harass by survey, capture, handle, release, collect adult vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities in California for the purpose of enhancing the species' survival.

Permit No. TE–27460A

Applicant: Brian Zitt, Santa Ana, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*); take (harass by survey, capture, handle, measure, and release) the arroyo toad (arroyo southwestern) (*Anaxyrus californicus*); and take (harass by survey, capture, handle, and release tadpole stage only) the mountain yellow-legged frog (southern California Distinct Population Segment (DPS)) (*Rana muscosa*) in conjunction with survey and monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–29522A

Applicant: Kenneth Gilliland, Ventura, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, and collect infertile/abandoned eggs) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*), and take (locate and monitor nests, and collect infertile/abandoned eggs) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with survey and population monitoring activities in California for the purpose of enhancing the species' survival.

Permit No. TE–157291

Applicant: National Park Service, Pinnacles National Park, Paicines, California

The applicant requests a permit renewal to take (capture, handle, maintain in captivity, attach radio-transmitters and visual wing markers, track, band, take feather samples, draw blood, administer medical testing and medical treatment, release, and supplementally feed in the wild) the California condor (*Gymnogyps californianus*) in conjunction with captive propagation and population management activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–835549

Applicant: Charles Black, San Diego, California

The applicant requests a permit to take (harass by survey, capture, handle, release, collect adult vouchers) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus woottoni*); and remove/reduce to possession the *Eryngium aristulatum* var. *parishii* (San Diego button-celery), *Monardella viminea* (*M. linoides* subsp. *v.*) (willowy monardella), *Orcuttia californica* (California Orcutt grass), and *Pogogyne abramsii* (San Diego mesa mint) in conjunction with surveys, restoration, population studies, and seed production activities on Marine Corps Air Station, Miramar, San Diego, California, for the purpose of enhancing the species' survival.

Permit No. TE–036065

Applicant: Korey Klutz, San Marcos, California

The applicant requests a permit renewal to take (survey by pursuit) the

Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–053020

Applicant: Andrew Pigniolo, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities in Riverside and San Diego County, California, for the purpose of enhancing the species' survival.

Permit No. TE–35207A

Applicant: Jordan Zylstra, San Jacinto, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–135974

Applicant: Michael Marangio, Richmond, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–135948

Applicant: Natalie Brodie, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–61175B

Applicant: Lindsay Willrick, San Diego, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–61177B

Applicant: Matthew, Ricketts, San Francisco, California

The applicant requests a permit renewal to take (harass by survey) the California Ridgway's rail (California clapper r.) (*Rallus obsoletus obsoletus*) (*R. longirostris o.*) in conjunction with surveys in Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, San Mateo, Solano, and Sonoma County, California, for the purpose of enhancing the species' survival.

Permit No. TE–134338

Applicant: Brenna Ogg, San Diego, California

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–61650B

Applicant: Normandeau Associates Incorporated, Bedford, New Hampshire

The applicant requests a permit to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with survey and monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–807078

Applicant: Point Reyes Bird Observatory, Petaluma, California

The applicant requests a permit amendment to take (harass by survey, locate and monitor nests, capture, measure, band, release, and set up, monitor and maintain cameras) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with survey and monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–58760A

Applicant: Jason Yakich, Forest Knolls, California

The applicant requests a permit renewal and amendment to take (harass by survey) the California Ridgway's rail (California clapper r.) (*Rallus obsoletus obsoletus*) (*R. longirostris o.*); take (harass by survey, capture, handle, release, and collect adult vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey activities in California for the purpose of enhancing the species' survival.

Permit No. TE–042952

Applicant: Gregory Ballmer, Riverside, California

The applicant requests a permit renewal to take (survey by pursuit) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–834492

Applicant: Julie Thomas, Morro Bay, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–839480

Applicant: Richard Zembal, Laguna Hills, California

The applicant requests a permit renewal to take (locate and monitor nests, capture, mark, band, release, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*); take (harass by survey, locate and monitor nests, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from

parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (harass by survey and locate and monitor nests) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*); take (harass by survey, locate and monitor nests, capture, band, and release) the western snowy plover (Pacific Coast population DPS) (*Charadrius nivosus nivosus*); take (capture, mark, band, remove from the wild, translocate, and release) the light-footed Ridgway's rail (light-footed clapper r.) (*Rallus obsoletus levipes*) (*R. longirostris l.*); and take (capture, handle, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) and San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*) in conjunction with research and population monitoring activities within Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–62464B

Applicant: Lindsay Griffin, Thousand Oaks, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–62868B

Applicant: The Klamath Tribes, Chiloquin, Oregon

The applicant requests a permit to take (survey, trap, capture, handle, collect, mark (including the use of fin clips, and PIT tags), collect gametes, propagate in situ, translocate/reintroduce) the Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*) in conjunction with surveys, propagation, population studies, and research activities throughout the range of each species for the purpose of enhancing the species' survival.

Permit No. TE–816187

Applicant: David Cook, Santa Rosa, California

The applicant requests a permit renewal to take (harass by survey, capture, mark, release, collect research individuals, tissue samples, and voucher specimens, and conduct formal training) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with population studies, research, and formal training activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–006112

Applicant: Gretchen Flohr, Hayward, California

The applicant requests a permit amendment to take (harass by survey) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with population studies and research throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–839211

Applicant: Marnie McKernan, Redlands, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–810768

Applicant: Paul Galvin, Irvine, California

The applicant requests a permit renewal to take (locate and monitor nests, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with population monitoring activities in California, and take (harass by survey, locate and monitor nests, remove brown-headed cowbird eggs and chicks from parasitized nests, capture, band, color-band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with population monitoring activities in California, Nevada, and Arizona for the purpose of enhancing the species' survival.

Permit No. TE–63359B

Applicant: Jennifer Radtkey, Oakland, California

The applicant requests a permit to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–780566

Applicant: Ruben Ramirez, Oceanside, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, measure, skin swab for chytrid sampling, collect tissue for skeletochronology, tag (insert passive integrated transponder (PIT)), and release) the arroyo toad (arroyo southwestern) (*Anaxyrus californicus*) in conjunction with population studies and research activities on Marine Corps Air Station Camp Pendleton in California for the purpose of enhancing the species' survival.

Permit No. TE–63371B

Applicant: Rheanna Neidinger, California

The applicant requests a permit to take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–28317A

Applicant: David Simi, San Jose, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–363422B

Applicant: U.S. Forest Service, Las Vegas, Nevada

The applicant requests a permit to take (survey by pursuit) the Mount Charleston blue butterfly (*Plebejus shasta charlestonensis*) in conjunction with survey activities within the Spring Mountains National Recreation Area in Nevada for the purpose of enhancing the species' survival.

Permit No. TE–045153

Applicant: Dustin Janeke, San Diego, California

The applicant requests a permit amendment to take (harass by survey,

capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–63440B

Applicant: Daniel Thompson, Las Vegas, Nevada

The applicant requests a permit to take (survey by pursuit, capture, handle, release, collect senescent adults and hatched eggs, and collect tissue samples) the Mount Charleston blue butterfly (*Plebejus shasta charlestonensis*) in conjunction with survey and research activities within the Spring Mountains National Recreation Area in Nevada for the purpose of enhancing the species' survival.

Permit No. TE–61720B

Applicant: Kelli Camara, Capitola, California

The applicant requests a permit to take (harass by survey, capture, handle, measure, swabbing for chytrid sampling, collect tissue for genetics (toe and tail clip and swabbing), mark, collect voucher specimens and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in conjunction with population studies and research activities in Santa Cruz and Monterey Counties, California, for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive 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.

Darrin Thome,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2015–11640 Filed 5–13–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/ A0A501010.999900 253G]

Whether A Group Asserting Residency on the Pinoleville Rancheria Is Eligible To Organize as a Tribe Under the Indian Reorganization Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of comment period.

SUMMARY: The Bureau of Indian Affairs (BIA) Pacific Regional Director has received a request for an administrative determination as to whether the requesting group of people is eligible to organize as a tribe under the Indian Reorganization Act (IRA). This notice is given to advise the public that BIA Pacific Regional Office will be accepting comments on this group's request and any other matter relevant to the Pacific Regional Director's determination.

DATES: Comments are due by within 60 days of this publication.

ADDRESSES: All interested parties are encouraged to submit comments by mail to: Pacific Regional Director, BIA, Attention: Tribal Government, 2800 Cottage Way, Room W–2820, Sacramento, CA 95825; by email to: *PACIFIC_TRIBALGOV@bia.gov;* or by fax to: (916) 978–6099.

FOR FURTHER INFORMATION CONTACT: Mr. Harley Long, Tribal Government Officer, Pacific Regional office, at (916) 978–6067.

SUPPLEMENTARY INFORMATION: The BIA Pacific Regional Director has received a request for an administrative determination as to whether the requesting group of people is eligible to organize as a tribe under IRA. The BIA will be accepting comments on this group's request and any other matter relevant to the Pacific Regional Director's determination, including comments regarding:

- Whether each member of the requesting group has 50 percent or greater Indian blood;
- Whether each member of the requesting group resides on the Pinoleville Rancheria;
- People residing on the Pinoleville Rancheria who meet any definition of ''Indian'' set out in the Indian Reorganization Act of 1934 (25 U.S.C. 479);
- Whether the Pinoleville Rancheria was set aside for the members of the requesting group, within the meaning of 25 CFR 81.2(w)(2), and;
- Whether the requesting group or some portion of it, is eligible to organize under 25 U.S.C. 476, 479 and 25 CFR 81.1(i), 81.1(w)(2).

This notice is published to comply with the requirements established in the Settlement Agreement in *Donald Allen, et al.* v. *United States, Department of the Interior,* N.D. Cal. No. 3:11–CV–5069, United States Court of Appeals for the Ninth Circuit No. 12–16573.

Dated: May 8, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–11626 Filed 5–11–15; 11:15 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[156D0102DM/DS10700000/ DMSN00000.000000/DX.10701.CEN00000]

Privacy Act of 1974, as Amended; Notice of a New System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of creation of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice of its intent to create the Indian Arts and Crafts Board system of records. The system will assist the Department of the Interior's Indian Arts and Crafts Board in overseeing the implementation of the Indian Arts and Crafts Act of 1990, as amended, and managing Indian Arts and Crafts Board program activities. This newly established system will be included in the Department of the Interior's inventory of record systems.

DATES: Comments must be received by June 23, 2015. This new system will be effective June 23, 2015.

ADDRESSES: Any person interested in commenting on this new system of records may do so by submitting written comments to Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240; hand-delivering comments to Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C

Street NW., Mail Stop 5547 MIB, Washington, DC 20240; or emailing comments to *Privacy@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Director, Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 2528 MIB, Washington, DC 20240; or by telephone at 202–208–3773.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI), Office of the Secretary is creating the Indian Arts and Crafts Board system of records. The system will assist the DOI Indian Arts and Crafts Board (IACB) in overseeing the implementation of the Indian Arts and Crafts Act of 1990, the investigation of individuals or organizations that offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization within the United States. The system also helps the IACB manage its program activities; promote the economic development of American Indians and Alaska Natives of federally recognized tribes through the expansion of the Indian arts and crafts market; provide promotional opportunities, general business advice, and information on the Indian Arts and Crafts Act to Native American artists, craftspeople, businesses, museums, and cultural centers of federally recognized tribes; manage museum exhibitions and activities; and produce the *Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses.*

In a notice of proposed rulemaking, which is published separately in the **Federal Register**, the Department of the Interior is proposing to exempt particular records maintained in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

The system will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received that would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal Agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information about an individual is retrieved by the name or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations located at 43 CFR part 2.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains and the routine uses of the information in each system in order to make agency record keeping practices transparent, notify individuals regarding the uses of their records, and assist individuals to more easily find such records within the agency. Below is the description of the Indian Arts and Crafts Board, DOI–24, system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report concerning this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Date: May 11, 2015.

Teri Barnett,

Departmental Privacy Officer.

SYSTEM NAME:

Indian Arts and Crafts Board, DOI–24

SYSTEM LOCATION:

Records in this system are maintained by the Department of the Interior, Indian Arts and Crafts Board, 1849 C Street NW., Mail Stop 2528–MIB, Washington, DC 20240; Office of Law Enforcement, U.S. Fish and Wildlife Service, 500 Gold Avenue, Mail Stop 9021, Albuquerque, New Mexico 87102; and at IACB field offices located at DOI facilities. Records are also maintained at DOI IACB museum facilities: Southern Plains Indian Museum, 801 E Central Boulevard, Anadarko, Oklahoma 73005; Museum of the Plains Indian, 19 Museum Loop, Browning, Montana 59417; and Sioux Indian Museum, 222 New York Street, Rapid City, South Dakota 57701.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who donate collection objects or other materials to the IACB; request access to or information about collections materials; request usage of or rights to archival materials held by the IACB; participate in exhibits, lectures, conferences, contests, or similar events sponsored by the IACB; individuals investigated or arrested for offering or displaying for sale or selling any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization; complainants and witnesses of complaints or investigations; and individuals who contact or correspond with DOI officials on matters relating to the management of IACB activities or implementation of the Indian Arts and Crafts Act. This system includes current and former IACB Commissioners and Board members, DOI employees, contractors, and volunteers who are involved in providing the services or the management of IACB program activities, promotions, or initiatives; employees or officials from other agencies, museums, or organizations involved in IACB exhibits, promotions, or activities; and Federal, state, local, or tribal law enforcement officials involved in investigating complaints. This system contains records concerning corporations and other business entities, which are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of corporations and other business entities may reflect personal information.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records created or compiled during the management and oversight of IACB activities including records relating to Native American arts and crafts, and outreach to Native American artists, craftspeople, businesses, museums, educational, and cultural organizations; records relating to economic development for Native American artists

and craftspeople; and law enforcement records. These records include tribal enrollment documents, photographs, forms, reports, and correspondence, which may include: First and last names, Social Security numbers, dates of birth, home or work addresses, home or work telephone numbers, email addresses, other contact information, badge numbers, investigation case numbers, identification numbers for subjects of investigation, tribal affiliation, tribal enrollment numbers, ethnicity and race, gender, fingerprints, hair and eye color, any other physical or distinguishing attributes of an individual, and category of art or craft. Law enforcement records in this system may also include additional information on individuals collected during the course of conducting an investigation on alleged violations of the Indian Arts and Crafts Act, such as background information, business and personal affiliations, and correspondence, referrals, and findings resulting from such investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 101–644, The Indian Arts and Crafts Act of 1990; Public Law 106–497, The Indian Arts and Crafts Enforcement Act of 2000; Public Law 111–211, The Indian Arts and Crafts Amendments Act of 2010; 25 U.S.C. 305, Indian Arts and Crafts Board; creation and composition; per diem payments; 18 U.S.C. 1159, Misrepresentation of Indian produced goods and products; and 25 CFR 309, Protection of Indian Arts and Crafts Products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system will assist the Department of the Interior IACB in implementation of the Indian Arts and Crafts Act, and management and oversight of program activities.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, disclosures outside DOI may be made as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible for which the records are collected or maintained.

(4) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(6) To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant, or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(8) To state, territorial, and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(9) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(10) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(12) To the Department of the Treasury to recover debts owed to the United States.

(13) To the news media and the public, with the approval of the Public Affairs Officer in consultation with Counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(14) To organizations or members of the general public who inquire about artists that have had business with the IACB in order to purchase their art work or craft, or to schedule or attend an exhibit or other similar event.

(15) To Federal, state, local, or tribal law enforcement agencies in order to initiate investigations, criminal

proceedings, or civil actions related to complaints or alleged violations of the Indian Arts and Crafts Act and other Federal laws.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1996 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in paper form are stored in file folders in file cabinets. Electronic records are maintained in computer servers, computer hard drives, electronic databases, email, and electronic media such as removable drives, compact disc, magnetic disk, diskette, and computer tapes.

RETRIEVABILITY:

Information within this system may be retrieved by individual's name, physical address, region and state of residence, email address, tribal affiliation, category of art or craft, investigation number, and identification number for subject.

SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security rules and policies. During normal hours of operation, paper records are maintained in locked filed cabinets under the control of authorized personnel. Computers and storage media are encrypted in accordance with DOI security policy. The computer servers in which electronic records are stored are located in secured DOI facilities with physical, technical and administrative levels of security to prevent unauthorized access to the DOI network and information assets. Security controls include encryption, firewalls, audit logs, and network system security monitoring. Access to servers containing records in this system is limited to DOI personnel and other authorized parties who have a need to know the information for the performance of their official duties, and requires a valid username and password. Electronic records are safeguarded by permissions set to ''Authenticated Users'' which require password login. Personnel authorized to access the system must complete all Security, Privacy, and Records Management training and sign the DOI Rules of Behavior.

RETENTION AND DISPOSAL:

IACB records are maintained in accordance with records retention schedules approved by the National Archives and Records Administration (NARA): Comprehensive Schedule of Indian Arts and Crafts Board (IACB) Textual Records (N1–435–93–001); Indian Arts and Crafts Board (IACB) Audiovisual and Publicity-Related Records (N1–435–92–002); Indian Arts and Crafts Board (IACB) Commemorative Volume, 1980, and Correspondence (N1–435–93–002); and Records of the Indian Arts and Crafts Board (IACB) Field Offices, 1930–1983 (N1–435–92–001). IACB Commissioners' biographical records, organizational files and program records, records of meetings, correspondence, publications, and other records relating to the official operations and functions of the IACB have a permanent disposition, and these records are transferred to NARA after cut-off. Other records including routine correspondence, administrative copy files, budget files, and duplicate copies have a temporary disposition, and these records are destroyed in accordance with their applicable retention schedules. Approved disposition methods for temporary records include shredding or pulping paper records, and erasing or degaussing electronic records in accordance with 384 Departmental Manual 1 and NARA guidelines.

SYSTEM MANAGER AND ADDRESS:

Director, Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 2528–MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

The Department of the Interior is proposing to exempt portions of this system from the notification procedures of the Privacy Act pursuant to section (k)(2). An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

RECORDS ACCESS PROCEDURES:

The Department of the Interior is proposing to exempt portions of this system from the access procedures of the Privacy Act pursuant to section (k)(2). An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request should describe the records sought as specifically as possible. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORDS PROCEDURES:

The Department of the Interior is proposing to exempt portions of this system from the amendment procedures of the Privacy Act pursuant to section (k)(2). An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from individual members of the public; organizations; Federal, state, local or tribal officials; DOI employees, contractors, and volunteers; and any persons who correspond or communicate with the IACB in the course of program management activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system contains law enforcement investigatory records that are exempt from certain provisions of the Privacy Act, 5 U.S.C. 552a(k)(2). Pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act, the Department of the Interior has exempted portions of this system from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f). In accordance with 5 U.S.C. 553(b), (c), and (e), the Department of the Interior has promulgated a rule, which has been published separately in today's **Federal Register**.

[FR Doc. 2015–11688 Filed 5–13–15; 8:45 am]

BILLING CODE 4334–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X L1109AF LUTY01000 L12200000.EA0000 24 1A]

Notice of Temporary Restrictions for Selected Public Lands in Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Restriction.

SUMMARY: Notice is hereby given that a temporary restriction is in effect on certain public lands administered by the Bureau of Land Management (BLM)—Moab Field Office, Moab, Utah.

DATES: This temporary restriction will be in effect from May 14, 2015 to May 15, 2017.

FOR FURTHER INFORMATION CONTACT: Beth Ransel, Moab Field Office Manager, BLM—Moab Field Office, 82 East Dogwood Avenue, Moab, UT 84532 or telephone 435–259–2100. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. Replies are provided during normal business hours. Also see the Moab Field Office Web site at: *www.blm.gov/ut/st/en/fo/moab.html.*

SUPPLEMENTARY INFORMATION: This temporary restriction affects public lands in the vicinity of Corona Arch and Gemini Bridges in Grand County, Utah. The legal descriptions of the affected public lands are:

Salt Lake Meridian

T. 25 S., R. 20 E.,
Sec. 34, NW1/4SW1/4 (that part surrounding Gemini Bridges);
T. 25 S., R. 21 E.,
Sec. 32, SE1/4SE1/4 (that part surrounding Corona Arch);
T. 26 S., R. 21 E.,
Sec. 5, NE1/4 (that part surrounding Corona Arch).
The areas described aggregate 37.3 acres.

The temporary restriction is necessary because activities including, but not limited to, ziplining, highlining, slacklining, rappelling, climbing, and swinging are causing user conflicts between hikers and roped-activity participants at these frequently visited areas on Moab Field Office-managed public lands.

The BLM will post restriction signs at main entry points to these areas. This restriction order will be posted in the Moab Field Office, 82 East Dogwood, Moab, UT 84532. Maps of the affected areas and other documents associated with this restriction are available at the Moab Field Office Web site at *www.blm.gov/ut/st/en/fo/moab.html.* While this temporary restriction is in place, the Moab Field Office will consider whether to permanently restrict these activities on the affected 37.3 acres of public lands through the BLM's land-use planning process outlined at 43 CFR part 1610.

Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following within the Corona Arch and Gemini Bridges areas:

Corona Arch and Gemini Bridges are closed to ziplining, highlining, slacklining, rappelling, climbing, and swinging. This temporary restriction affects 31 acres surrounding Corona Arch and 6.3 acres surrounding Gemini Bridges. The restriction means that there will be no activities involving ropes, cables, vectran, climbing aids, webbing or anchors (''roped activities'') allowed on the affected public lands in the vicinity of Corona Arch and Gemini Bridges.

The following persons are exempt from this order: Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the BLM.

Any person who violates the above rule(s) and/or restriction(s) may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Authority: 43 CFR 8364.1.

Megan Crandall,

Acting State Director.

[FR Doc. 2015–11672 Filed 5–13–15; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Members of SGIP 2.0, Inc.

Notice is hereby given that, on April 7, 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''), Members of SGIP 2.0, Inc. (''MSGIP 2.0'') 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, JKN Consulting, Scotts Valley, CA; FREEDM Systems Center, Raleigh, SC; CMG Consulting LLC, Austin, TX; Energy Central, Aurora, CO; Ernst & Young, London, UNITED KINGDOM; Nikos Hatziargyriou Technical Office Consultants, Athens, GREECE; Geza Joos (individual member), Outremont, Quebec City, CANADA; Real-Time Innovations, Inc., Sunnyvale, CA; Energy Alternative Solutions, LLC, Bel Air, MD; and CPS Energy, San Antonio, TX, have been added as parties to this venture.

Also, Drummond Group, Inc., Austin, TX; Taiwan Smart Grid Industry Association (TSGIA), Taipei City, TAIWAN; Power Systems Engineering Research Center (PSERC), Tempe, AZ; Microsoft Corporation, Redmond, WA; Emerson Electric Co., St. Louis, MO; Ambient Corporation, Newton, MA; Verizon Communications, Basking Ridge, NJ; MISO, Carmel, IN; Florida Power & Light Company, Juno Beach, FL; Homegrid Forum, Portland, OR; QualityLogic, Inc., Moorpark, CA; Schneider Electric, Norcross, GA; LonMark International, San Jose, CA; Kyocera Telecommunications Research Center (KTRC), Freemont, CA; Sharon Albrecht (individual member), Austin, TX; Korea Testing Laboratory, Guro-gu, Seoul, REPUBLIC OF KOREA; PosiGen, Metairie, LA; College of Engineering, Computer Science, and Construction Management CSU—Chico, Chico, CA; XBRL US, Inc., Washington, DC; and JLM Energy Inc., Rocklin, CA, 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 MSGIP 2.0 intends to file additional written notifications disclosing all changes in membership.

On February 5, 2013, MSGIP 2.0 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 7, 2013 (78 FR 14836).

The last notification was filed with the Department on January 14, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 2015 (80 FR 10715).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–11610 Filed 5–13–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Cloudfoundry.Org Foundation, Inc.

Notice is hereby given that, on April 16, 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''), CloudFoundry.org Foundation, Inc. (''CFF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. 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 name and principal place of business of the standards development organization is: CloudFoundry.org Foundation, Inc., San Francisco, CA. The nature and scope of CFF's standards development activities are: to establish and sustain Cloud Foundry as the global industry standard Platform-as-a-Service (''PaaS'') open source technology with a thriving ecosystem; to deliver continuous quality, value, and innovation to users, operators, and providers of Cloud Foundry technology and thereby promote the common business interests of such users, operators, and providers; and to provide a vibrant agile experience for the community's contributors that delivers the highest quality cloud-native applications and software at high velocity with global scale.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–11611 Filed 5–13–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for OMB 1205–0245, Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM), Extension Without Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the continuation of collection of data about the accuracy of paid and denied UI claims, which is accomplished through the BAM survey. The Department's BAM information collection authority, under Office of Management and Budget (OMB) number 1205–0245, is scheduled to expire on December 31, 2015.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 13, 2015.

ADDRESSES: Send written comments to Dennis Austin, Office of Unemployment Insurance, Room S–4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3056 (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). Email: *Austin.Dennis@dol.gov.* To obtain a copy of the proposed information collection request (ICR), please contact the person listed above.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all State Workforce Agencies (SWAs) except the U.S. Virgin Islands have been required by regulation at 20 CFR part 602 to operate BAM programs to assess the accuracy of their UI benefit payments in three programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-servicemembers (UCX). Beginning in 2001, BAM was modified to include the sampling and investigation of UI claims denied for monetary, separation, or nonseparation issues.

BAM is one of the tools the Department uses to measure and reduce waste, fraud, and abuse in the UI program. By investigating small representative weekly samples of both paid and denied UI claims, each state is able to estimate reliably the number and dollar value of proper and improper payments; the number of proper and improper denials of claims for UI benefits; the rates of occurrence of these proper and improper payments and denials; and the error types, error causes, and the parties that are responsible for the errors.

Paid Claims Accuracy (PCA). Each week SWAs select random samples of both intrastate and interstate original payments (including combined wage claims) made for a week of UI benefits under the State UI, UCX or UCFE programs. A sample of 360 cases per year is pulled in the ten states with the smallest UI program workloads (defined as the average annual UI weeks paid during the last five years) and 480 cases per year in the other states. State BAM staff audit each selected claim, examining all aspects of a claimant's eligibility to receive UI benefits during the sampled week. The findings are entered into an automated database that is maintained on a computer located in each state.

Denied Claims Accuracy (DCA). Each week states select random samples from three separate sampling frames constructed from the universes of UI claims for which eligibility was denied for monetary, separation and nonseparation reasons. All states sample a minimum of 150 cases of each denial type in each calendar year. State BAM staff review agency records and contact claimants, employers, and all other relevant parties to verify information in agency records or obtain additional information pertinent to the determination that denied eligibility for UI benefits. Unlike the investigation of paid claims, in which all prior determinations affecting claimant eligibility for the compensated week selected for the sample are evaluated, the investigation of denied claims is limited to the issue upon which the denial determination is based. The findings are entered into an automated database that is maintained on a computer located in each state.

The Department maintains a database of each state's BAM paid and denied claims cases, minus any personally identifying information. The Department uses BAM data to measure state performance with respect to UI payment integrity and to meet the Department's reporting requirements of the Improper Payments Information Act

of 2002 (IPIA), the Improper Payments Elimination and Recovery Act of 2010 (IPERA), and the Government Performance and Results Act (GPRA). The Department also relies heavily on BAM data for information on UI operations, such as claims filing method, UI wage replacement rates, and claimant characteristics. The results of the BAM survey are reported annually on the ETA Web site at the following link: *http://oui.doleta.gov/unemploy/.*

II. Review Focus

The Department is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without revisions.

Title: Unemployment Insurance Benefit Accuracy Measurement.

OMB Number: 1205–0245.

Affected Public: State Workforce Agencies (Primary), individuals, businesses, and not-for-profit institutions.

Form(s): BAM State Operations Handbook (ET Handbook 395, 5th edition).

Total Annual Respondents: 179,145.2.

Annual Frequency: BAM samples are selected weekly; the BAM data collection instrument is updated continuously as the audits are conducted.

Average Time per Response: 10.09 hours per investigation. This estimate is a weighted average.

Estimated Total Annual Burden Hours: 476,013.2.

Total Annual Burden Cost for Respondents: $18,870,582.59.

BAM PCA/DCA Data Annual Collection Burden per State Workforce Agency

	Paid claims	Monetary denied claims	Separation denied claims	Non-separation denied claims	Total
Cases	*457	150	150	150	907
Respondents/Case	4.65	3.10	3.10	2.6	3.80
Hours/Case	12.59	7.85	7.85	6.97	10.09
Total Respondents	2125.1	465	465	390	3445.10
Total Hours	5753.6	1177.5	1177.5	1045. 5	9154.1

*Average for all 52 State Workforce Agencies (SWAs). The 10 smallest states in terms of UI weeks paid sample at the rate of 360 cases per year; the other 42 states sample at the rate of 480 cases per year.
52 SWAs × 3,445.1 respondents = 179,145.2 respondents.
52 SWAs × 9,154.1 hours = 476,013.2 hours.

Annual PCA/DCA Total Cost by Respondent

Cost summary	Paid claims	Denied claims	Cost per state	Cost—52 SWAs
SWA Staff	$208,317.97	$135,142.56	$343,460.53	$17,859,947.56
Claimants	3,313.25	2,463	128,076	300,365
Employers + 3rd Parties	20,402.67	5,015.34	25,418.01	1,321,720.67
Total All Costs	224,901.94	137,994.18	485,195.87	18,870,582.59

We will summarize and/or included 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. 2015–11646 Filed 5–13–15; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection Request for OMB 1205–0154, Unemployment Insurance (UI) Trust Fund Activities Reports, Extension Without Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. 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.

Currently, ETA is soliciting comments concerning the continuation of the collection of data on UI Trust Fund Activities Reports. The current

expiration date for this collection is December 31, 2015.

DATES: Submit written comments to the office listed in the addresses section below on or before July 13, 2015.

ADDRESSES: Send written comments to Joe Williams, Office of Unemployment Insurance, Room S–4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: (202) 693–2928 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Email: *williams.joseph@dol.gov.* To obtain a copy of the proposal information collection request (ICR), please contact the person listed above.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(4) of the Social Security Act (SSA) and Section 3304(a)(3) of the Federal Unemployment Tax Act (FUTA) require that all monies received in the unemployment fund of a state be paid immediately to the Secretary of Treasury to the credit of the Unemployment Trust Fund (UTF). This is the ''immediate deposit'' standard.

Section 303(a)(5) of the SSA and Section 3304(a)(4) of the FUTA require that all monies withdrawn from the UTF be used solely for the payment of unemployment compensation, exclusive of the expenses of administration. This is the ''limited withdrawal'' standard.

Federal law (Section 303(a)(6) of the SSA) gives the Secretary of Labor the authority to require the reporting of information deemed necessary to assure state compliance with the provisions of the SSA.

Under this authority, the Secretary of Labor requires the following reports to monitor state compliance with the immediate deposit and limited withdrawal standards:

ETA 2112: UI Financial Transactions Summary, Unemployment Fund
ETA 8401: Monthly Analysis of Benefit Payment Account
ETA 8405: Monthly Analysis of Clearing Account
ETA 8413: Income—Expense Analysis Unemployment Compensation (UC) Fund, Benefit Payment Account
ETA 8414: Income—Expense Analysis UC Fund, Clearing Account
ETA 8403: Summary of Financial Transactions—Title IX Funds

These reports are submitted to the Office of Unemployment Insurance (OUI) within the ETA which uses them to:

- Monitor cash flows into and out of the UTF to determine state compliance with the immediate deposit and limited withdrawal standards.
- Assure proper accounting for unemployment funds, an integral part of preparing the Department's consolidated financial statements required by the Chief Financial Officer Act of 1990. The UTF is the single largest asset and liability on the statements.
- Reconcile the Department's records with the U.S. Treasury records.
- Support UI research and actuarial reports analyzing the solvency of the UTF.

The Department seeks renewal of this collection since the reports are essential to the Department's financial statements and program oversight 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;
- 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 the use of the appropriate automated, electronic, mechanical, technological or other forms of information collection techniques.

III. Current Actions

The continued collection of these financial data are necessary for the purposes of monitoring and evaluating state financial transactions for proper oversight and administration of the UI system.

Type of Review: Extension without change.

Title: Unemployment Insurance Trust Fund Activities Reports, ETA 2112, 8401, 8405, 8413, 8414, 8403.

OMB Number: 1205–0154.

Affected Public: State Workforce Agencies.

Estimated Total Annual Respondents: 53.

Annual Frequency: Monthly.

Estimated Total Annual Responses: 636.

Average Time per Response: The ETA 2112, 8401, 8405, 8413, and 8414 are all submitted on a monthly basis. We estimate the state burden to be: 636 total responses × 2.5 hours for all 5 reports (.5 hours for each report) = 1,590 hours. The ETA 8403 is submitted only when there is activity requiring update of the state's Reed Act account. We estimate the state burden to be: 53 states × 6 annual responses × 30 minutes per response = 159 reporting hours.

Estimated Total Burden Hours: 1,749 hours.

Total Estimated Annual Other Cost Burden: $0.

We summarize and/or included 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. 2015–11648 Filed 5–13–15; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for OMB 1205–0199, Unemployment Insurance (UI) Title XII Advances and Voluntary Repayment Process, Extension Without Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection process of data about UI Title XII advances and voluntary repayments, which expires December 31, 2015.

DATES: Written comments must be submitted to the office listed in the

addresses section below on or before July 13, 2015.

ADDRESSES: Submit written comments to Joe Williams, Office of Unemployment Insurance, Room S–4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2928 (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). Email: *williams.joseph@dol.gov.* To obtain a copy of the proposed information collection request (ICR), please contact the person listed above.

SUPPLEMENTARY INFORMATION:

I. Background

Title XII Section 1201 of the Social Security Act (SSA) provides for advances to states from the Federal Unemployment Account (FUA). The law further sets out specific requirements to be met by a state requesting an advance:

- The Governor, or designee, must apply for the advance;
- The application must cover a three month period and the Secretary of Labor (Secretary) must be furnished with estimates of the amounts needed in each month of the three month period;
- The application must be made on such forms and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the state unemployment compensation law as the Secretary deems necessary or relevant to the performance of his or her duties under this title;
- The amount required by any state for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the state's unemployment fund for the payment of compensation in such month; and
- The term ''compensation'' means cash benefits payable to individuals with respect to their unemployment exclusive of expenses of administration.

Section 1202(a) of the SSA provides that the Governor of any state may at any time request that funds be transferred from the account of such state to the FUA in repayment of part or all of the balance of advances made to such state under section 1201. These applications and repayments may be requested by an individual designated for that authority in writing by the Governor.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without revisions.

Title: Unemployment Insurance (UI) Title XII Advances and Voluntary Repayment Process.

OMB Number: 1205–0199.

Affected Public: State Workforce Agencies.

Estimated Total Annual Respondents: 5.

Estimated Total Annual Responses: DOL currently estimates that 5 states will borrow during fiscal year 2016, and these states could continue to be borrowing during calendar year 2016 and beyond. Although it's difficult to know the exact number of responses, the maximum would be four requests for advances and four requests for voluntary repayments per state each year. This will result in a maximum possible number of responses of 120 over the three year window or an average of 40 responses per year.

Average Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 40 hours.

Total Annual Burden Cost for Burden: There is no burden cost.

We will summarize and/or included in the request for OMB approval of the ICR, the comments received in response to this comment request; will also become a matter of public record.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2015–11649 Filed 5–13–15; 8:45 am]

BILLING CODE 4510–FW–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors will meet telephonically on May 22, 2015. The meeting will commence at 10:30 a.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Consider and act on the Board of Directors' transmittal to accompany the Inspector General's Semiannual Report to Congress for the period of October 1, 2014 through March 30, 2015
3. Public comment
4. Consider and act on other business
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the

meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: May 12, 2015.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2015–11739 Filed 5–12–15; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: May 27, 2015; 1:00 p.m. to 5:30 p.m. (EST).

May 28, 2015; 9:00 a.m. to 12:00 p.m. (EST)

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230; Stafford I, Room 1235.

Type of Meeting: Open.

Contact Person: Joan Miller, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–8200.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda

May 27, 2015

Welcome/Introductions; Discussion with Chief Operating Officer; NSF Relocation-Business Process Planning; iTRAK Implementation-Business Process Impact; Operational Change Experiences; Committee Discussion.

May 28, 2015

BFA/OIRM Updates; Documentation of BOAC Recommendations; Briefing on the National Academy of Public Administration (NAPA) Study of NSF's Use of Cooperative Agreements to Support Large Scale Investments in Science and Technology; Meeting Wrap-Up.

Dated: May 8, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015–11576 Filed 5–13–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: June 1, 2015 12:00pm—4:00pm EDT (Teleconference).

Place: National Science Foundation, Room 1060, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230. Teleconference dial-in number: 1–866–564–0410, passcode: 557855.

Type of Meeting: Open.

Contact Person: Dr. James Ulvestad, Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–7165.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA), and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: May 8, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015–11575 Filed 5–13–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0120]

RIN–3150–AI61

Selection of Material Balance Areas and Item Control Areas

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–5057, ''Special Nuclear Material Control and Accounting System for Non-Fuel Cycle Facilities.'' This DG provides guidance to licensees and applicants on the NRC's regulations concerning the material control and accounting of special nuclear material. The need for this guidance arises from an ongoing NRC rulemaking to revise these regulations, as discussed further in Section II below. The scope of DG–5057 covers nuclear power plants and all non-fuel cycle facilities.

DATES: Submit comments by June 15, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a speficied subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0120. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tom Pham, Office of Nuclear Material Safety and Safeguards, 301–287–9132, email: *Tom.Pham@nrc.gov,* or, Mekonen Bayssie, Office of Nuclear Regulatory Research, 301–251–7489, email: *mekonen.bayssie@nrc.gov*. U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0120 when contacting the NRC about the availability of information regarding this document. You may obtain publically-available information related to this document, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0120.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/*

adams.html. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if available in ADAMS) is provided the first time that a document is references. The draft regulatory guide is available electronically under ADAMS accession number ML15015A271. The regulatory analysis may be found in ADAMS under Accession No. ML15015A294.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

• NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0120 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is conducting a rulemaking to revise part 74 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Material Control and Accounting of Special Nuclear Material,'' and in this regard published on November 8, 2013 (78 FR 67225) a proposed rule for comment. The rulemaking to revise the material control and accounting (MC&A) regulations was initially authorized by a 2009 staff requirements memorandum (SRM) to SECY–08–0059, ''Rulemaking Plan: Part 74—Material Control and Accounting of Special Nuclear Material.'' The SRM and SECY–08–0059 may be found in ADAMS under Accession Nos. ML090360473 and ML080580307, respectively. The SRM directed the NRC staff to revise existing MC&A guidance documents to reflect any new and revised requirements.

The draft guidance that the NRC is issuing for public comment is a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public technical information, such as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled ''Special Nuclear Material Control and Accounting System for Non-Fuel Cycle Facilities,'' is temporarily identified by its task number, DG–5057. This DG–5057 is proposed revision 3 of RG 5.29. Revision 3 of RG 5.29 considers conformance with the provisions of American National Standards Institute (ANSI) N15.8 2009, ''Methods of Nuclear Material Control—Material Control Systems—Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants,'' to be an acceptable approach to meet the MC&A requirements in subpart B of 10 CFR part 74 at nuclear power plants. DG–5057 expands the scope of the guidance to cover the proposed new requirements in subpart A of 10 CFR part 74 and to cover all non-fuel cycle facilities.

III. Backfitting and Issue Finality

Draft Guide–5057 provides guidance on MC&A recordkeeping and reporting requirements, as set forth in 10 CFR part 74. The regulatory guidance held in this guidance provides methods that the NRC staff finds acceptable for an applicant or licensee to meet the requirements of the underlying NRC regulations. The issuance of the guidance in DG–5057 is not backfitting, as that term is defined in 10 CFR 50.109, 70.76, or 72.62, or inconsistent with the issue finality provisions in 10 CFR part 52, because information collection and reporting requirements with respect to material control and accounting are not included within the scope of the NRC's backfitting protections or part 52 issue finality provisions.

Applicants and potential applicants are not, with certain exceptions, protected by any issue finality provisions under part 52. This is because the issue finality provisions under part 52, with certain exclusions discussed below, were not intended to apply to every NRC action which substantially changes the expectations of current and future applicants. The exceptions to the general principle are whenever an applicant references a part 52 license (*e.g.,* an early site permit) and/or NRC regulatory approval (*e.g.,* a design certification rule, a standard design approval) with specified issue finality provisions. However, the scope of issue finality provided extends only to the matters resolved in the license or regulatory approval. Early site permits, design certification rules, and standard design approvals do not address or resolve compliance with material control and accounting requirements in 10 CFR part 74. Therefore, no applicant referencing an early site permit, design certification rule, or standard design approval is protected by relevant issue finality provisions with respect to the material control and accounting matters addressed in DG–5057.

Dated at Rockville, Maryland, this 8th day of May, 2015.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2015–11618 Filed 5–13–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2013–0053]

Construction Permit Application for the SHINE Medical Radioisotope Production Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; public meetings and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Environmental Impact Statement (EIS) for the construction permit application submitted by SHINE Medical Technologies, Inc. (SHINE), for the SHINE Medical Radioisotope Production Facility (SHINE facility). The proposed SHINE facility would be located in Janesville, Wisconsin. Possible alternatives to the proposed action (issuance of the construction permit) include no action, reasonable alternative sites, and a reasonable

alternative technology. The NRC staff plans to hold two public meetings during the public comment period to present an overview of the draft EIS and to accept public comments on the document.

DATES: Submit comments by July 6, 2015. Comments received after this date will be considered, if it is practical to do so but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0053. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michelle Moser, Office of Nuclear Reactor Regulation, telephone: 301–415–6509; email: *Michelle.Moser@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2013–0053 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0053.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is referenced. The draft EIS for the Construction Permit for the proposed SHINE facility is available in ADAMS under Accession No. ML15127A241.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0053 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC is issuing for public comment a draft EIS for the construction permit for the proposed SHINE facility. This draft EIS includes the preliminary analysis that evaluates the environmental impacts of the proposed action and alternatives to the proposed action. The preliminary recommendation is that after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, the NRC staff recommends, the issuance of the requested construction permit to SHINE, unless safety issues mandate otherwise.

III. Public Meetings

The NRC staff will hold public meetings prior to the close of the public comment period to present an overview of the draft EIS for the proposed construction permit and to accept public comment on the document. Two meetings will be held on June 10, 2015, at the Rotary Botanical Gardens, 1455 Palmer Drive, Janesville, WI 53545. The first session will convene at 2:00 p.m. and will continue until 4:00 p.m., as necessary. The second session will convene at 7:00 p.m. and will continue until 9:00 p.m., as necessary. The meetings will be transcribed and will include: (1) A presentation of the contents of the draft EIS; and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft EIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft EIS will be accepted during the informal discussions. To be considered in the final EIS, comments must be provided either at the transcribed public meeting or submitted in writing by the comment deadline identified above. Persons may pre-register to attend or present oral comments at the meeting by contacting Ms. Michelle Moser, the NRC environmental project manager, at 1–800–368–5642, extension 6509, or by email at *Michelle.Moser@nrc.gov* no later than Friday, June 5, 2015. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Moser's attention no later than Tuesday, June 2, 2015, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

Dated at Rockville, Maryland, this 8th day of May, 2015.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Environmental Review, and Guidance Branch, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–11668 Filed 5–13–15; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Public Meeting of the Office of Science and Technology Policy

ACTION: Notice of Public Meeting.

SUMMARY: The Office of Science and Technology Policy will hold a public meeting on July 22, 2015, for interested stakeholders to discuss implementation of the U.S. Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern. The purpose of the meeting is to inform and engage stakeholders; collect feedback about resources needed to effectively implement the policy; and discuss stakeholder experiences, challenges, and innovative practices.

DATES: July 22, 2015 from 9:00 a.m. to 4:45 p.m. EST.

ADDRESSES: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, Building 10, Lipsett Auditorium. Meeting information and updates will be posted *http://www.phe.gov.*

Registration: Due to space limitations, pre-registration for the workshop is required. Registration is on a first-come, first-served basis and subject to space limitations. Registration will open on May 15, 2015. Individuals planning to attend the workshop should register online at *www.PHE.gov/DURCworkshop.*

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please email *DURC@ostp.gov.* Additional information about the workshop, including the agenda, is posted at *http://www.phe.gov.*

Meeting Accomodations: Individuals requiring special accommodation to access this public meeting should email *DURC@ostp.gov.* at least ten business days prior to the meeting so that appropriate arrangements can be made.

Stacy L. Murphy,

Operations Manager/Acting Security Officer.

[FR Doc. 2015–11683 Filed 5–13–15; 8:45 am]

BILLING CODE 3270–F5–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form TH, SEC File No. 270–377, OMB Control No. 3235–0425.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form TH (17 CFR 239.65, 249.447, 269.10 and 274.404) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) is used by registrants to notify the Commission that an electronic filer is relying on the temporary hardship exemption for the filing of a document in paper form that would otherwise be required to be filed electronically as prescribed by Rule 201(a) of Regulation S–T. Form TH must be filed every time an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of a required electronic filing. Approximately 5 registrants file Form TH and it takes an estimated 0.33 hours per response for a total annual burden of 2 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 8, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11598 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of InferX Corp., and Sedona Corp.; Order of Suspension of Trading

May 12, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of InferX Corp. (CIK No. 1329548), a void Delaware corporation with its principal place of business listed as Tysons Corner, Virginia, with stock quoted on OTC Link (previously, ''Pink Sheets'') operated by OTC Markets Group, Inc. (''OTC Link'') under the ticker symbol NFRX, because it has not filed any periodic reports since the period ended September 30, 2012. On May 23, 2014, InferX received a delinquency letter sent by the Division of Corporation Finance requesting compliance with their periodic filing obligations.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sedona Corp. (CIK No. 764843), a Pennsylvania corporation with its principal place of business listed as King of Prussia, Pennsylvania, with stock quoted on OTC Link under the ticker symbol SDNA, because it has not filed any periodic reports since the period ended March 31, 2010. On January 28, 2013, Sedona received a delinquency letter sent by the Division of Corporation Finance requesting compliance with their periodic filing obligations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 12, 2015, through 11:59 p.m. EDT on May 26, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–11751 Filed 5–12–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74910; File No. S7–24–89]

Joint Industry Plan; Notice of Filing of Amendment No. 35 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

May 8, 2015.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on April 27, 2015, the operating committee (''Operating Committee'' or ''Committee'') [3] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Plan.[4] This amendment represents the 35th Amendment (''Amendment No. 35'') to the Plan and proposes to require the Participants to include timestamps in the trade-report and bid-and-offer information that they report to the Plan's processors. The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendment.

I. Rule 608(a)

A. Purpose of the Amendment

Section VIII of the UTP Plan (Transmission of Information to Processor by Participants) specifies that each Participant shall collect and transmit to the Processor accurate quotation information, including (1) the identification of the security, (2) the price bid and offered, together with size, (3) the FINRA Participant along with the FINRA Participant's market participant identification or Participant from which the quotation emanates, (4) identification of quotations that are not firm, and (5) through appropriate codes and messages, withdrawals and similar matters.

Section VIII also specifies that each Participant shall promptly collect and transmit to the Processor trade reports executed in its market, including (1) identification of the security, (2) the number of shares in the transaction, (3) the price at which the shares were purchased or sold, (4) the buy/sell/cross indicator, (5) the market of execution, and (6) through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

Amendment 35 proposes to add to those requirements that Participants shall also include in quotation information and trade reports the time of the trade or the quotation.

In the case of a Participant that is a national securities exchange, the time of the transaction or quotation is to be reported in microseconds as identified in the Participant's matching engine publication timestamp.

In the case of FINRA, the time of a transaction shall be the time of execution that a FINRA member reports to a FINRA trade reporting facility and the time of a bid or offer shall be the quotation publication timestamp that the bidding or offering member reports to the FINRA quotation facility, all in accordance with FINRA rules.

In addition, if the FINRA trade reporting facility or quotation facility provides a proprietary feed of trades or quotes reported by the facility to the Processor, then the FINRA facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed.

FINRA shall convert times that its members report to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor in microseconds.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendments

All of the Participants have manifested their approval of the proposed Amendment by means of their execution of the UTP Plan Amendment. The UTP Plan Amendment would become operational upon approval by the Commission.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

Amendment 35 does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. It will improve transparency regarding the latencies between the UTP Plan's consolidated data feeds and industry proprietary feeds and will allow investors to monitor the latency of those feeds and to assess whether such feeds meet their trading and other requirements.

The Participants do not believe that the proposed UTP Plan Amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.[5]

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Section IV(C)(1)(a) of the UTP Plan requires the Participants to unanimously approve the Amendment. They have so approved it.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The Plan Participants (collectively the ''Participants'') are the: BATS Exchange, Inc.; BATS Y-Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc.

[4] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

[5] 15 U.S.C. 78k–1(c)(1)(D).

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

See Section IA above.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

See Section IA above.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Amendment 35 proposes to add timestamps to Participant reports of trades and bids and offers. The addition of timestamps should provide investors with a more complete picture of trades, making those reports more complete and more accurate.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not Applicable.

III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 35. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 S7–24–89 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 S7–24–89. 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 Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment 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 Web site viewing and printing at the Office of the Secretary of the Committee, currently located at the Chicago Stock Exchange, Inc., 440 S. LaSalle Street, Chicago, IL 60605. 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 S7–24–89 and should be submitted on or before June 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11622 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74906; File Nos. SR–DTC–2015–801; SR–NSCC–2015–801]

Self-Regulatory Organizations; The Depository Trust Company; National Securities Clearing Corporation; Notice of Filing and No Objection to Advance Notices Relating to the Renewal of Existing Line of Credit

May 7, 2015.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 [1] (''Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934, notice is hereby given that on April 20, 2015, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' together with DTC, ''Clearing Agencies'') filed with the Securities and Exchange Commission (''Commission'') the advance notices SR–DTC–2015–801 and SR–NSCC–2015–801 (''Advance Notices'') as described in Items I and II below, which Items have been prepared primarily by the Clearing Agencies. The Commission is publishing this notice to solicit comments on the Advance Notices from interested persons and provide notice that the Commission does not object to the Advance Notices.

I. Clearing Agencies' Statement of the Terms of Substance of the Advance Notices

The Advance Notices are being filed by the Clearing Agencies in connection with the renewal of the Clearing Agencies' 364-day syndicated revolving credit facility (''Renewal''), as more fully described below.

II. Clearing Agencies' Statement of the Purpose of, and Statutory Basis for, the Advance Notices

In their filings with the Commission, the Clearing Agencies included statements concerning the purpose of and basis for the Advance Notices and discussed any comments they received on the Advance Notices. The text of these statements may be examined at the places specified in Item IV below. The Clearing Agencies have prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of such statements.

(A) Clearing Agencies' Statement on Comments on the Advance Notices Received From Members, Participants, or Others

Written comments on the Advance Notices have not yet been solicited or received. The Clearing Agencies will notify the Commission of any written comments received by the Clearing Agencies.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Description of the Change

As part of their liquidity risk management regime, the Clearing Agencies maintain a 364-day committed

[6] 17 CFR 200.30–3(a)(27).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

revolving line of credit with a syndicate of commercial lenders which is renewed every year. The terms and conditions of the current Renewal will be specified in the Fourteenth Amended and Restated Revolving Credit Agreement, to be dated as of May 12, 2015 (''Renewal Agreement''), among the Clearing Agencies,[3] the lenders party thereto, the primary administrative agent and the other parties thereto, and are substantially the same as the terms and conditions of the existing credit agreement, dated as of May 13, 2014, among the same parties, as heretofore amended (''Existing Agreement''),[4] except that pricing and the amount of the aggregate commitment will change. The substantive terms of the Renewal are set forth in the Summary of Indicative Principal Terms and Conditions, dated March 23, 2015, which is not a public document. The aggregate commitments being sought under the Renewal will be for an amount of approximately $15 billion for NSCC and DTC together, with an aggregate commitment of $1.9 billion to DTC as borrower, and all but $1.9 billion aggregate commitments would be the commitments to NSCC as borrower, as provided in the Existing Agreement.

This agreement and its substantially similar predecessor agreements have been in place since the introduction of same day funds settlement at the Clearing Agencies. The Clearing Agencies require same-day liquidity resources to cover the failure-to-settle of NSCC's largest Member or affiliated family of Members, or of the DTC Participant or affiliated family of Participants with the largest net settlement obligations. If a NSCC Member defaults on or a DTC Participant fails to satisfy its end-of-day settlement obligations, each Clearing Agencies may borrow under its line to enable it, if necessary, to fund settlement among non-defaulting NSCC Members or DTC Participants.

Any NSCC borrowing would be secured principally by (i) securities deposited by Members in NSCC's Clearing Fund (*i.e.,* the Eligible Clearing Fund Securities, as defined in NSCC's Rule 4, pledged by Members to NSCC in lieu of cash Clearing Fund deposits), and (ii) securities cleared through NSCC's Continuous Net Settlement System (CNS) that were intended for delivery to the defaulting Member upon payment of its net settlement obligation. NSCC's Clearing Fund[5] (which operates as its default fund) addresses potential exposure through a number of risk-based component charges calculated and assessed daily. As integral parts of NSCC's risk management structure, the line of credit and the Clearing Fund, together, provide NSCC liquidity to complete end-of-day money settlement.

Any DTC borrowing would be secured principally by securities that were intended to be delivered to the defaulting Participant upon payment of its net settlement obligation and securities previously designated by the defaulting Participant as collateral. The liquidity facility is built into DTC's primary risk management controls, the net debit cap and collateral monitor, which together require that the end-of-day net funds settlement obligation of a Participant cannot exceed DTC's liquidity resources and is fully collateralized.

Anticipated Effect on and Management of Risk

As noted, the committed revolving line of credit is a cornerstone of Clearing Agencies risk management and this Renewal is critical to the Clearing Agencies risk management infrastructure. The Renewal does not otherwise affect or alter the management of risk at the Clearing Agencies. The Renewal is consistent with Section 805(b) of the Clearing supervision Act[6] and with Commission Rule 17Ad–22(d)(11)[7] (regarding default procedures) because it mitigates liquidity risk.

[3] The Renewal Agreement will provide for both DTC and NSCC as borrowers, with an aggregate commitment of $1.9 billion for DTC and the amount of any excess aggregate commitment for NSCC. The borrowers are not jointly and severally liable and each lender has a ratable commitment to each borrower. DTC and NSCC have separate collateral to secure their separate borrowings.

[4] Last year, the Securities and Exchange Commission (''Commission'') published Notice of Filing and No Objection to the Clearing Agencies' advance notice filings with respect to the Clearing Agencies' renewal beginning on May 13, 2014. *See* Securities Exchange Act Release No. 72131 (May 8, 2014), 79 FR 27654 (May 14, 2014) (SR–NSCC–2014–805); Securities Exchange Act Release No. 72132 (May 8, 2014), 79 FR 27658 (May 14, 2014) (SR–DTC–2014–805).

[5] NSCC's Clearing Fund includes additional liquidity deposits by certain Members pursuant to NSCC's Supplemental Liquidity Deposit rule (Rule 4(A)).

[6] 12 U.S.C. 5464(b). The Financial Stability Oversight Council designated NSCC a systemically important financial market utility on July 18, 2012. *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.* Therefore, the Clearing Agencies are required to comply with the Clearing Supervision Act.

[7] 17 CFR 240.17Ad–22(d)(11).

III. Date of Effectiveness of the Advance Notices, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The Clearing Agencies shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the Clearing Agencies with prompt written notice of the extension. The proposed change may be implemented in less than 60 days from the date the Advance Notices are filed, or the date further information requested by the Commission is received, if the Commission notifies the Clearing Agencies in writing that it does not object to the proposed change and authorizes the Clearing Agencies to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The Clearing Agencies shall post notice on their Web site of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notices are consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2015–801 or SR–NSCC–2015–801 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–DTC–2015–801 or SR–NSCC–2015–801. One of these file numbers 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 Advance Notices that are filed with the Commission, and all written communications relating to the Advance Notices 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 Clearing Agencies and on DTCC's Web site at *http://dtcc.com/legal/sec-rule-filings.aspx.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2015–801 or SR–NSCC–2015–801 and should be submitted on or before June 4, 2015.

V. Commission Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive.[8] The stated purpose is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''FMUs'') and strengthening the liquidity of systemically important FMUs.[9] Section 805(a)(2) of the Clearing Supervision Act [10] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the Supervisory Agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act [11] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act [12] and the Exchange Act (''Clearing Agency Standards'').[13] The Clearing Agency Standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[14] Therefore, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[15]

The Commission believes that the proposal in the Advance Notices is consistent with Clearing Agency Standards, in particular, Commission Rule 17Ad–22(d)(11) for NSCC and DTC, and Rule 17Ad–22(b)(3) for NSCC. Commission Rule 17Ad–22(d)(11) requires that registered clearing agencies ''establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.'' The Commission believes that the proposal is consistent with Rule 17Ad–22(d)(11) because the renewed credit facility will provide the Clearing Agencies with a readily available liquidity resource that will enable them to continue to meet their respective obligations in a timely fashion, in the event of a member default, thereby helping to contain losses and liquidity pressures from that default.

Commission Rule 17Ad–22(b)(3) requires a central counterparty (''CCP''), like NSCC,[16] to ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain 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. . . .'' The Commission believes that the proposal is consistent with Rule 17Ad–22(b)(3) because NSCC's proposal to enter into a renewed credit facility will help it maintain sufficient financial resources to withstand, at a minimum, a default by an NSCC member to which NSCC has the largest exposure.

For these reasons, the Commission believes the Advance Notices are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act, including that they reduce systemic risks and support the stability of the broader financial system. As discussed above, the renewal of the credit facility will provide the Clearing Agencies needed liquidity when experiencing severe liquidity pressure from a member default. Given that the Clearing Agencies have been designated as systemically important FMUs, the Clearing Agencies' ability to provide their clearing services during such an event contributes to reducing systemic risks and supporting the stability of the broader financial system.

For the reasons stated above, the Commission does not object to the Advance Notices.

VI. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[17] that the Commission *does not object* to the advance notices SR–DTC–2015–801 and SR–NSCC–2015–801 and that DTC and NSCC be and hereby are *authorized* to implement the change as of the date of this notice.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–11602 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* 12 U.S.C. 5461(b).

[9] *Id.*

[10] 12 U.S.C. 5464(a)(2).

[11] 12 U.S.C. 5464(b).

[12] 12 U.S.C. 5464(a)(2).

[13] *See* Exchange Act Rule 17Ad–22. 17 CFR 240.17Ad–22. Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11).

[14] *Id.*

[15] 12 U.S.C. 5464(b).

[16] *See* FSOC 2012 Annual Report, *supra* note 4. DTC serves as a central securities depository, not as a CCP, for almost all corporate and municipal debt and equity securities available for trading in the United States. *Id.*

[17] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74911; File No. SR–BOX–2015–18]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Replace BOX Rule 7170 (Obvious and Catastrophic Errors) With New Rule 7170 (Nullification and Adjustment of Options Transactions Including Obvious Errors)

May 8, 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 May 5, 2015, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to replace current BOX Rule 7170 (''Current Rule''), entitled ''Obvious and Catastrophic Errors,'' with new Rule 7170 (''Proposed Rule''), entitled ''Nullification and Adjustment of Options Transactions including Obvious Errors.'' The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to replace current BOX Rule 7170 (''Current Rule''), entitled ''Obvious and Catastrophic Errors,'' with new Rule 7170 (''Proposed Rule''), entitled ''Nullification and Adjustment of Options Transactions including Obvious Errors.'' This is a competitive filing that is based on a proposal submitted by BATS Exchange, Inc. (''BATS'') [3]

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) Certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is

[3] *See* File No. SR–BATS–2014–067.

formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Priority Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' to make clear that this term would not include any broker-dealer or Professional Customer.[4] Although other portions of the Exchange's rules address the capacity of market participants, including customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction'' that are identical to the definitions in the Current Rule. As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to adopt a definition of ''Official,'' which would mean an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of the Proposed Rule. While the Exchange uses the term MRC (''Market Regulation Center'') to identify these individuals in its Current Rule, the Exchange believes that it is important for all options exchanges to have the identical definitions in their Obvious and Catastrophic Rules where possible.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual transactions as follows:

Number of contracts per execution	Adjustment—TP plus/minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[5] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more,

[4] A ''Professional'' is any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 100(a)(50).

[5] *See* 17 CFR 240.10b–18(a)(5)(ii).

whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to the Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the Current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[6] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a long enough time for market participants to receive, process and account for and respond to new market

[6] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

information.[7] While introducing this new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

Transactions at the Open

Under the Proposed Rule, for a transaction occurring as part of the Opening Process [8] the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described above. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described above, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 × $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described above. The Exchange believes that it is necessary to determine theoretical price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine theoretical price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify the MOC [9] in the manner specified from time to time by the Exchange in a circular distributed to Participants. The Exchange currently requires notification via telephone but believes that maintaining flexibility in the Rule is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order

[7] *See, e.g.,* Exchange Rule 7150, which provides that the duration of the PIP shall be one hundred milliseconds; *see also* Securities Exchange Act Release No. 66306 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BX–2011–084) (order granting approval of proposed rule change to reduce the duration of the PIP from one second to one hundred milliseconds).

[8] *See* Exchange Rule 7070 for a description of the Exchange's Opening Process.

[9] The term ''Market Operations Center'' or ''MOC'' means the BOX Market Operations Center, which provides market support for Options Participants during the trading day. *See* Rule 100(a)(31).

to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Official may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Official that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Official to act as soon as possible after becoming aware of the transaction; action by the Official would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Official shall act no later than 8:30 a.m. Eastern Time on the next trading day following the date of the transaction in question.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Official's review on his or her own motion may appeal such determination in accordance with paragraph (l), which is described below. The Proposed Rule would make clear that a determination by the Official not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Official's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by the Exchange.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	$0.30	$0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be

advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract, however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any Participant submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one Participant could generate multiple erroneous transactions. In order for a Participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[10] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Participant has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	$1.00
Above $5.00 to $10.00	$1.50
Above $10.00 to $20.00	$2.00
Above $20.00 to $50.00	$2.50
Above $50.00 to $100.00	$3.00
Above $100.00	$4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by the MOC by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify the MOC within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify the MOC in the manner specified from time to time by the Exchange in a circular distributed to Participants. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	$1.00	$1.00
Above $5.00 to $10.00	$1.50	$1.50
Above $10.00 to $20.00	$2.00	$2.00
Above $20.00 to $50.00	$2.50	$2.50
Above $50.00 to $100.00	$3.00	$3.00
Above $100.00	$4.00	$4.00

[10] The Exchange notes that in the third quarter of this year across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[11] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a the Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion is equal to or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category

[11] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) the Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) the Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a Participant has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a SME that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, the Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 7170(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that a trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a Participant is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Regulatory Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Exchange Rule 7080 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to make clear in the Proposed Rule that it will nullify any transaction that occurs during a trading halt in the affected option on the Exchange pursuant to Rule 7170. If any trades occur notwithstanding a trading halt then the Exchange believes it appropriate to nullify such transactions. While the Exchange may halt options trading for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

The Exchange proposes to add new Interpretation Material IM–7080–3 to Rule 7080. Currently, Rule 7080 does not give the Exchange explicit authority to nullify a transaction that occurs: (a) During a trading halt in the affected option on the Exchange; or (b) with respect to equity options (including options overlying ETFs), during a regulatory halt as declared by the primary listing market for the underlying security. To ensure consistency with the trading halt provision of the Exchange with that of the other option exchanges, the Exchange proposes to adopt new Interpretation Material IM–7080–3 to Rule 7080 to give the Exchange the explicit authority to nullify transactions in the two situations described above.

Erroneous Print and Quotes in Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the MOC in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. The Exchange believes that one second is an appropriate amount of time in which an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify the MOC within the timeframes set forth in the Obvious Error provision described above. The Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying is trading in the $49.00–$50.00 price range then has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based off of this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the MOC in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average quote width will be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[12] Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify the MOC in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each Participant to notify the Exchange if such Participant believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual Participant. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a Participant has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could trigger based off of this new quoted price in the interim. Because the price that triggered such trades was not a valid price it would be appropriate to review said option trades.

Stop (and Stop-Limit) Order Trades Triggered by Erroneous Trades

The Exchange notes that certain market participants and their customers enter stop or stop limit orders that are triggered based on executions in the marketplace. As proposed, transactions resulting from the triggering of a stop or stop-limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies the MOC in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly triggered because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction pursuant to the Proposed Rule it must notify the MOC within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the stop or stop-limit order.

Linkage Trades

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Options Order Protection and Locked/Crossed Market Plan [13] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the Participant and the OCC of the adjustment or nullification. Thus, the Exchange believes that the proposed provision adds additional transparency to the Proposed Rule.

[12] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See, e.g.,* CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

[13] As defined in Exchange Rule 15000(n).

Verifiable Disruptions or Malfunctions of Exchange Systems

The Exchange proposes to maintain language in its Current Rule a provision that allows any transaction arising out of a verifiable disruption or malfunction in the use or operation of any Exchange automated quotation, dissemination, execution or communication system to either be nullified or adjusted by an Official. Under the Proposed Rule, transactions that qualify for price adjustment will be adjusted to the Theoretical Price, as defined in paragraph (b) of this Rule.

Further, in the interest of maintaining a fair and orderly market for the protection of investors, an Official, on its own motion, may review any transaction occurring on the Exchange that is believed to be the result of a verifiable disruption or malfunction. The Official, when exercising its discretion to review transactions pursuant to this paragraph, shall act as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. In no event shall the Official act later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question.

Appeals

The Exchange proposes to maintain its current appeals process in connection with the Proposed Rule. Specifically, if a Participant affected by a determination made under the Proposed Rule requests within the time permitted below, the CRO will review decisions made by the Official, including whether an obvious error occurred and whether the correct determination was made.

Under the Proposed Rule a request for review on appeal must be made in writing via email or other electronic means specified from time to time by the Exchange in a circular distributed to Participants within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The CRO shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

The CRO may overturn or modify an action taken by the Official under this Rule. All determinations by the CRO shall constitute final action by the Exchange on the matter at issue. The Exchange believes that this is necessary given the purpose of the appeal is finality.

Any determination by the Exchange, the Official or CRO shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

Limit Up-Limit Down Plan

The Exchange is proposing to adopt Interpretation Material IM–7070–1 to the Proposed Rule to provide for how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan),[14] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[15] Under the Proposed Rule, during a pilot period to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan, an execution will not be subject to review as an Obvious Error or Catastrophic Error pursuant to paragraph (c) or (d) of the Proposed Rule if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the Plan. The Exchange, however, proposes to retain authority to review transactions on the Exchange's own motion pursuant to sub-paragraph (c)(3) of the Proposed Rule and to bust or adjust transactions pursuant to the proposed Significant Market Event provision, the proposed trading halts provision, the proposed provisions with respect to erroneous prints and quotes in the underlying security, or the proposed provision related to stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security.

During a Limit or Straddle State, options prices may deviate substantially from those available immediately prior to or following such States. Thus, determining a Theoretical Price in such situations would often be very subjective, creating unnecessary uncertainty and confusion for investors. Because of this uncertainty, the Exchange is proposing to amend Rule 7170 to provide that the Exchange will not review transactions as Obvious Errors or Catastrophic Errors when the underlying security is in a Limit or Straddle State.

The Exchange notes that there are additional protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers. First, the Exchange rejects all un-priced options orders received by the Exchange (*i.e.,* Market Orders) during a Limit or Straddle State for the underlying security. Second, SEC Rule 15c3–5 requires that, ''financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous.'' [16] Third, the Exchange has optional price checks applicable to limit orders that reject limit orders that are priced sufficiently far through the national best bid or national best offer (''NBBO'') that it seems likely an error occurred. The rejection of Market Orders, the requirements placed upon broker dealers to adopt controls to prevent the entry of orders that appear to be erroneous, and Exchange functionality that filters out orders that appear to be erroneous, will all serve to sharply reduce the incidence of erroneous transactions.

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from Participants and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

[14] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (order approving the Plan on a pilot basis).

[15] 17 CFR 242.600(b)(47).

[16] *See* Securities and Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791 (November 15, 2010) (File No. S7–03–10).

In connection with this proposal, the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in the month during which the proposal is approved, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

• Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.

• For activity on the Exchange:

• executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;

• high execution price, low execution price;

• number of trades for which a request for review for error was received during Straddle and Limit States;

• an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, by May 29, 2015, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan. The Exchange notes that the pilot program is intended to run concurrent with the pilot period of the Plan, which has been extended to October 23, 2015. The Exchange proposes to reflect this date in the Proposed Rule.

No Adjustments to a Worse Price

Finally, the Exchange proposes to include Interpretation and Policy .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

The Exchange proposes that is proposed rule change become operative on May 8, 2015 which will coordinate with the other options exchanges adopting these harmonized rules.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[17] in general, and Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act [19] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Participants, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutual agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct an erroneous transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(5).

definitions of Customer, erroneous sell transaction and erroneous buy transaction is consistent with Section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Interpretation Material IM–7070–2 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with Section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the Current Rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, Participants representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give the Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public

interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any Participant submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by a Participant representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by a Participant that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a market participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Participant has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with Section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is

necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to review, nullification and/or adjustment of erroneous transactions during a trading halt (including the proposed modification to Rule 7080), an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to stop and stop limit orders is likewise consistent with Section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process as the Exchange maintains under the Current Rule is consistent with the Act because such process provides Participants with due process in connection with decisions made by Exchange Officials under the Proposed Rule.

With regard to the portion of the Exchange's proposal related to the applicability of the Obvious Error Rule when the underlying security is in a Limit or Straddle State, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act because it will provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Further, the Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude from Rule 7170 those transactions executed during a Limit or Straddle State. The Exchange believes the application of the Proposed Rule without the proposed provision would be impracticable given the lack of reliable NBBO in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Proposed Rule change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given the fact that options prices during brief Limit or Straddle States may deviate substantially from those available shortly following the Limit or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit or Straddle States. In this respect, the Exchange notes that only those orders with a limit price will be executed during a Limit or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

The Exchange notes that under certain limited circumstances the Proposed Rule will permit the Exchange to review transactions in options that overlay a security that is in a Limit or Straddle State. Specifically, an Official will have authority to review a transaction on his or her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will have the authority to adjust or nullify transactions in the event of a Significant Market Event, a trading halt in the affected option, an erroneous print or quote in the underlying security, or with respect to stop and stop limit orders that have been triggered based on erroneous trades. The Exchange believes that the safeguards described above will protect market participants and will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with

certainty that, under normal circumstances, the trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review those transactions that occur during a Limit or Straddle State would allow the Exchange to account for unforeseen circumstances that result in Obvious or Catastrophic Errors for which a nullification or adjustment may be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Similarly, the ability to nullify or adjust transactions that occur during a Significant Market Event or trading halt, erroneous print or quote in the underlying security, or erroneous trade in the option (*i.e.,* stop and stop limit orders) may also be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will administer this provision in a manner that is consistent with the principles of the Act and will create and maintain records relating to the use of the authority to act on its own motion during a Limit or Straddle State or any adjustments or trade breaks based on other proposed provisions under the Rule.

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 not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by BATS.[20]

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2015–18 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.

[20] *See supra,* note 3.

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–BOX–2015–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2015–18, and should be submitted on or before June 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11591 Filed 5–13–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74916; File No. SR–BX–2015–028]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter V, Section 6

May 8, 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 May 7, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Regulation of Trading on BX Options, Section 6, entitled ''Obvious and Catastrophic Errors'' (''Current Rule''), to replace with new Section 6 entitled ''Nullification and Adjustment of Options Transactions including Obvious Errors'' (''Proposed Rule''). Section 6 relates to the adjustment and nullification of options transactions that occur on BX Options.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Priority Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' to make clear that this term would not include any broker-dealer or Professional.[3] Although other portions of the Exchange's rules address the capacity of market participants, including customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to adopt a new term, ''Official,'' to apply only to Section 6. Specifically, the term ''Official'' shall mean an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Officials shall be displayed on the Exchange Web site. The Chief Regulatory Officer shall maintain the list of Officials and update the Web site each time a name is added to, or deleted from, the list of Officials. In the event no Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual transactions as follows:

[3] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Chapter I, Section 1(a)(49).

Number of contracts per execution	Adjustment—TP plus/minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds, the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[4] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask

[4] *See* 17 CFR 240.10b–18(a)(5)(ii).

differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[5] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a long enough time for market participants to receive, process and account for and respond to new market information.[6] While introducing this new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

Transactions at the Open

Under the Proposed Rule, for a transaction occurring as part of the opening[7] the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described above. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described above, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 × $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described above. The Exchange believes that it is necessary to determine theoretical price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine theoretical price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify an Official in the manner specified from time to time by the Exchange in a notice distributed to Participants. The Exchange currently requires electronic notification through a web-based application but believes that maintaining flexibility in the Rule

[5] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

[6] *See, e.g.,* Chapter VII, Section 12, which requires certain orders to be exposed for at least one second before they can be executed; *see also* Securities Exchange Act Release No. 66306 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BX–2011–084) (order granting approval of proposed rule change to reduce the duration of the PIP from one second to one hundred milliseconds).

[7] *See* Chapter VI, Section 8 for a description of the Exchange's opening process.

is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Exchange Officer may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Exchange Officer the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Exchange Officer that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Exchange Officer to act as soon as possible after becoming aware of the transaction; action by the Exchange Officer would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Exchange Officer shall act no later than 8:30 a.m. Eastern Time on the next trading day following the date of the transaction in question.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Exchange Officer's review on his or her own motion may appeal such determination in accordance with paragraph (k), which is described below. The Proposed Rule would make clear that a determination by an Exchange Officer not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Exchange Officer's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Exchange Officer.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by an Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract, however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any Participant submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one Participant could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[8] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Participant has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by an Official by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify an Official within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify an Official in the manner specified from time to time by the Exchange in a notice distributed to Participants. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will

[8] The Exchange notes that in the third quarter of this year across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

be adjusted by an Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[9] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a the Worst Case Adjustment Penalty, proposed as

[9] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion equals or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: Sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a Participant has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a Significant Market Event that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an

Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Section 6(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that a trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a Participant is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Regulatory Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Chapter V, Section 3 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to make clear in the Proposed Rule that it will nullify any transaction that occurs

during a trading halt in the affected option on the Exchange pursuant to Section 6. If any trades occur notwithstanding a trading halt then the Exchange believes it appropriate to nullify such transactions. While the Exchange may halt options trading for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

The Exchange proposes to adopt Commentary .03 to Section 6 to state that the Exchange will nullify any transaction that occurs: (a) During a trading halt in the affected option on the Exchange; (b) with respect to equity options (including options overlying ETFs), during a trading halt on the primary listing market for the underlying security; or (c) respecting index options, the trade occurred during a trading halt on the primary market in underlying securities representing more than 10 percent of the current index value for stock index options. Currently, the Exchange's rules do not directly address nullification during a trading halt. Accordingly, and for consistency with other exchanges' rules, the Exchange proposes to adopt this provision.

Erroneous Print and Quotes in Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies an Official in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. The Exchange believes that one second is an appropriate amount of time in which an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify an Official within the timeframes set forth in the Obvious Error provision described above. The Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying is trading in the $49.00–$50.00 price range then has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based off of this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies an Official in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average quote width will be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[10]

Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify an Official in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each Participant to notify the Exchange if such Participant believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual Participants. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a Participant has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could trigger based off of this new quoted price in the interim. Because the price that triggered such trades was not a valid price it would be appropriate to review said option trades.

Linkage Trades

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Options Order Protection and Locked/Crossed

[10] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See, e.g.,* CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

Market Plan [11] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the Participant and The Options Clearing Corporation (''OCC'') of the adjustment or nullification. Thus, the Exchange believes that the proposed provision adds additional transparency to the Proposed Rule.

Appeals

The Exchange proposes to maintain its current appeals process in connection with the Proposed Rule. Specifically, a party to a transaction affected by a decision made under this section may appeal that decision to the Exchange Review Council. An appeal must be made in writing, and must be received by Exchange within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. The Exchange Review Council may review any decision appealed, including whether a complaint was timely, whether an Obvious Error or Catastrophic Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price.

In order to maintain a diverse group of participants, the Exchange Review Council panel will continue be comprised minimally of representatives of one (1) member engaged in Market Making and two (2) industry representatives not engaged in Market Making. At no time should a review panel have more than 50% members engaged in Market Making. To assure fairness, members of the Exchange Review Council, like all members of Board Committees, are subject to a conflict of interest prohibition.[12]

No Adjustments to a Worse Price

Finally, the Exchange proposes to include Commentary .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Limit Up-Limit Down Plan

The Exchange proposes to amend Section 3(d)(iv) to reflect the numbering and content of the Proposed Rule. It will then continue to cover how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan),[13] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[14]

Implementation Date

In order to ensure that other options exchanges are able to adopt rules consistent with this proposal and to coordinate the effectiveness of such harmonized rules, the Exchange proposes to delay the operative date of this proposal to May 8, 2015.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [16] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act [17] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Participants, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutual agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct an erroneous

[11] *See* Chapter XII, Section 1(17).

[12] *See* By-Law Article IV, Section 4.15.

[13] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[14] 17 CFR 242.600(b)(47).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5).

transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with Section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Commentary .02 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with Section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, Participants representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time

of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any Participant submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by a Participant representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by an Participant that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Participant has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with Section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust

transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to an erroneous print in the underlying security or an erroneous quote in the underlying security is likewise consistent with Section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process as the Exchange maintains under the Current Rule is consistent with the Act because such process provides Participants with due process in connection with decisions made by Officials under the Proposed Rule. The Exchange believes that this process provides fair representation of members by ensuring diversity amongst the members of any Obvious Error Review Panel, which is consistent with Sections 6(b)(3) and 6(b)(7) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX believes the entire proposal is consistent with Section 6(b)(8) of the Act[18] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described

[18] 15 U.S.C. 78f(b)(8).

above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Not applicable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–028 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–BX–2015–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–028, and should be submitted on or before June 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74921; File No. SR–NYSEArca–2015–41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.87—Obvious Errors and Catastrophic Errors in Order To Harmonize Substantial Portions of the Rule With Recently Adopted, and Proposed Rules of Other Options Exchanges

May 8, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 8, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.87—Obvious Errors and Catastrophic Errors [4] in order to harmonize substantial portions of the rule with recently adopted, and proposed rules of other options exchanges. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For the purposes of this filing, Rule 6.87—Obvious Errors and Catastrophic Errors, in its current format is referred to as ''Current Rule.'' Rule 6.87—Obvious Errors and Catastrophic Errors, with proposed changes is referred to as ''Proposed Rule''.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Current Rule 6.87—Obvious Errors and Catastrophic Errors in order to harmonize substantial portions of the rule with recently adopted, and proposed, rules of other options exchanges.[5]

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) Certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and

[5] *See, e.g.,* Securities Exchange Act Release No. 74556 (March 20, 2015), 80 FR 16031 (March 26, 2015) (SR–BATS–2014–067 as amended) (the ''BATS Filing'').

equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches an exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally speaking, public customers—more favorable treatment in some circumstances.

Proposed Rule

The changes proposed in this filing are substantially similar to recently approved changes to BATS Rule 20.6, pursuant to the BATS Filing. The Exchange notes that certain provisions of BATS Rule 20.6, regarding trading halts and nullification by mutual agreement, are covered by Exchange rules other than Current Rule 6.87. The Exchange is not proposing to amend or relocate those rules; however, where appropriate, the Exchange has included a reference to those rules in this filing.[6]

NYSE Arca trades options on both an electronic system and via open outcry on the Floor of the Exchange. Unless otherwise noted in this filing, both Current Rule 6.87 and Proposed Rule 6.87 apply to electronic transactions only.

Title

The Exchange proposes to re-title Rule 6.87 from ''Obvious and Catastrophic Errors'' to ''Nullification and Adjustment of Options Transactions including Obvious Errors.'' The new rule title is consistent with the BATS Filing and is in keeping with the efforts of the options exchanges to harmonize rules where possible.

Definitions—Proposed Rule 6.87(a)

The Exchange proposes to adopt various new definitions and will maintain certain existing definitions in the Proposed Rule, as described below.

• First, the Exchange proposes to adopt a new definition of ''Customer,'' [7] for the purposes of the Proposed Rule, to make clear that this term would not include any broker-dealer or Professional Customer.[8] Although other portions of the Exchange's rules address the capacity of market participants, including Customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

• Second, the Exchange proposes to adopt new definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

• Third, the Exchange proposes to adopt a new definition of ''Official,'' which for the purposes of this rule would mean an Officer of the Exchange or a Trading Official, as defined in Rule 6.1(b)(34), who is trained in the application of the Proposed Rule. The Exchange notes that utilizing an Exchange Officer or Trading Official when making Obvious and Catastrophic Error determinations is consistent with existing Rule 6.87.

• Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual orders as follows:

Number of contracts per execution	Adjustment theoretical price plus/minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of

[6] *See infra* ''Additional Exchange Provisions.''

[7] *See* Commentary .06 to Rule 6.87 (setting forth definition of Customer for purpose of Current Rule).

[8] A ''Professional Customer'' is any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 6.1A (a)(4A).

underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[9] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Theoretical Price—Proposed Rule 6.87(b)

Normal Circumstances

Pursuant to both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the Exchange would use the last NBB and last NBO just prior to the Exchange's receipt of the order as the Theoretical Price for determining the execution price at all price levels.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

Transactions at the Open

Under the Proposed Rule, for a transaction occurring as part of the Opening Auction [10] the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described below. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described below. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described below, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 x $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described below. The Exchange believes that it is necessary to determine theoretical price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine theoretical price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Trading Officials currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Trading Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the Current Rule, Trading Officials will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Trading Officials may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBBO for the affected

[9] *See* 17 CFR 240.10b–18(a)(5)(ii).

[10] *See* Exchange Rule 6.64 for a description of the Exchange's Opening Auction.

series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of Rule 6.37(b)(1), with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20). The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a long enough time for market participants to receive, process and account for and respond to new market information.[11] While introducing this new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

Obvious Errors—Proposed Rule 6.87(c)

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify the Exchange's Trade Desk in the manner specified from time to time by the Exchange in a Trader Update.[12] The Exchange currently only accepts notification via email or phone but believes that maintaining flexibility in the Rule is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected

[11] *See, e.g.,* Exchange Rule 6.91(c)(3), which subjects eligible orders entered into the Electronic Complex Order Auction to be exposed on NYSE Arca for a period of time not to exceed one second before they will be executed.

[12] Trader Updates are information memos issued by the Exchange and distributed via email to OTP Holders and posted on the Exchange's Web site.

transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Current Rule 6.87(b)(3) authorizes the Chief Executive Officer of NYSE Arca, Inc. (''CEO'') or designee thereof, who is an officer of the Exchange (collectively ''Exchange officer''), to review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This provision is designed to give the Exchange ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. The Exchange also proposes to relocate substantive provisions of Rule 6.87(b)(3) and incorporate them into proposed Rule 6.87(c)(3). In addition, the Exchange proposes to replace ''Chief Executive Officer of NYSE Arca, Inc. (''CEO'') or designee thereof, who is an officer of the Exchange'' with Official (as defined in Proposed Rule 6.87(a)(3)). Having an Official make the determination to review a trade on his/her own motion is consistent with BATS Rule 20.6(c)(3).

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Official's review on his or her own motion may appeal such determination in accordance with paragraph (k), which is described below. The Proposed Rule would make clear that a determination by an Official not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Official's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Official.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer transactions because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes

that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract; however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any OTP Holder submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that OTP Holder has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one OTP Holder could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[13] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a OTP Holder has more than 200 transactions under review concurrently.

Catastrophic Errors—Proposed Rule 6.87(d)

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by the Exchange's Trade Desk by 8:30 a.m. Eastern Time (''ET'') on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Trade Desk within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify the Exchange's Trade Desk in the manner specified from time to time by the Exchange in a Trader Update. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50

[13] *See* Securities Exchange Act Release No. 73884 (December 18, 2014), 79 FR at 77562, n.8 (December 24, 2014) (Notice of Filing of SR–BATS–2014–067 as amended). BATS notes that in third quarter of 2014 across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events—Proposed Rule 6.87(e)

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[14] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded, or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a the Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion equals or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: Sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2

[14] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

(applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a market participant has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or exceeded or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a SME that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 6.87(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Trading Halts—Proposed Rule 6.87(f)

Exchange Rule 6.65 Commentary .04 stipulates that trades that occur during a trading halt on the Exchange in the affected option shall be nullified. The Exchange is not proposing to amend Rule 6.65 as part of this filing, but does propose to include a reference to Rule 6.65 Commentary .04 in Proposed Rule 6.87(f). While a trade that occurs during a halt in an option series is not subject to the same criteria as an Obvious Error, the Exchange believes including such a cross reference with in Rule 6.87 is appropriate as it would add clarity to market participants as to what would happen to a trade that occurred during a trading halt.

Erroneous Print in Underlying Security—Proposed Rule 6.87(g)

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to provide market participants a process that allows for the adjustment or nullification of transactions based on an erroneous print in the underlying security.

Current Rules 6.87(a)(4) provides OTP Holders an opportunity for relief in the event an aberrant transaction resulted from an erroneous print in the underlying security. The Current Rules are similar in scope to BATS Rules 20.6(g) and provide OTP Holders a similar opportunity for relief that is afforded to BATS members. The Exchange is proposing to adopt Rule 6.87(g) which is substantially similar to BATS Rule 20.6(g). In addition, the Current Rule contains provisions covering erroneous prints and quotes in related instruments that are not part of the BATS rules. The Exchange proposes to incorporate those provisions into the Proposed Rule, as explained later.

The Exchange proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify the Exchange's Trade Desk within the timeframes set forth in the Obvious Error provision described above. The Exchange further proposes to state that for the purposes of an erroneous print in the underlying security, the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. The Exchange also proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

Current Rule 6.87(a)(4)(A)–(C) contains an additional provision governing erroneous prints in related instruments, which was outside of the scope of the industry-wide harmonization effort and was not included in the BATS Filing. Accordingly, the Exchange proposes to adopt new subsection (g)(1), containing

rule text from Current Rules 6.87(a)(4)(A)–(C). Proposed Rule 6.87(g)(1) together with subparagraphs (A)–(B), are virtually identical to the Current Rule and explain in detail the procedures for the nullification or adjustment of an options transaction that resulted from an erroneous print in a related instrument. Retaining current rules governing erroneous prints in related instruments will allow OTP Holders to continue to seek relief in such situations.

As previously mentioned in the filing, unless otherwise noted Proposed Rule 6.87 pertains to electronic trading only. Accordingly, the Exchange proposes to not carry over the reference to an ''electronic'' trade (found in the Current Rule) to Proposed Rule 6.87(g), as that concept is covered in earlier rule text.

Erroneous Quote in Underlying Security—Proposed Rule 6.87(h)

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to provide market participants a process that allows for the adjustment or nullification of transactions based on an erroneous quote in the underlying security.

Current Rule 6.87NY(a)(5) provides OTP Holders an opportunity for relief in the event an aberrant transaction resulted from an erroneous quote in the underlying security. The Current Rule is similar in scope to BATS Rules 20.6(h) and provides OTP Holders a similar opportunity for relief that is afforded to BATS members. The Exchange is proposing to adopt Rules 6.87(h) which is substantially similar to BATS Rule 20.6(h). In addition, the Current Rules contain provisions covering erroneous quotes in related instruments that are not part of the BATS rules. The Exchange proposes to incorporate those provisions into the Proposed Rule, as explained below.

The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous quote pursuant to the proposed erroneous quote provision it must notify the Exchange's Trade Desk within the timeframes set forth in the Obvious Error provision described above. For the purposes of an erroneous quote in the underlying security, the Exchange proposes to state the allowed notification timeframe commences at the time of the options execution.

Current Rule 6.87(a)(5)(A) contains an additional provision governing erroneous quotes in related instruments, which was outside of the scope of the industry-wide harmonization effort and was not included in the BATS Filing. Accordingly, the Exchange proposes to adopt new subsection (h)(1), containing rule text from Current Rules 6.87(a)(5)(A). Proposed Rule 6.87(h)(1), together with subparagraph (A), are virtually identical to the Current Rule and further explain procedures for the nullification or adjustment of an options transaction that resulted from an erroneous quote in a related instrument. Retaining current rules governing erroneous quotes in related instruments will allow OTP Holders to continue to seek relief in such situations.

Current Rule 6.87(a)(5)(B) describes the procedures for determining the average quote width and states that ''the average quote width shall be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).'' These procedures are substantially similar in all material respects to those contained in Proposed Rule 6.87(h).

Stop and Stop-Limit Order Trades Triggered by Erroneous Trades—Proposed Rule 6.87(i)

The Exchange notes that certain market participants and their customers enter Stop Orders [15] or Stop Limit Orders [16] that are triggered based on executions in the marketplace. As proposed, Rule 6.87(i) would provide that transactions resulting from the triggering of a Stop or Stop Limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies the Exchange's Trade Desk in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly triggered because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction pursuant to the Proposed Rule it must notify the Exchange's Trade Desk within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the Stop Order or Stop Limit order.

[15] *See* Exchange Rule 6.62(d)(1).

[16] *See* Exchange Rule 6.62(d)(2).

Linkage Trades—Proposed Rule 6.87(j)

The Exchange also proposes to adopt Rule 6.87(j) that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Options Order Protection and Locked/Crossed Market Plan [17] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange would perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the OTP Holder and the OCC of the adjustment or nullification. Thus, the Exchange believes that the proposed subsection (j) adds additional transparency to the Proposed Rule.

Appeals—Proposed Rule 6.87(k)

Current Exchange rules governing the appeal of an Obvious or Catastrophic Error determination are similar in scope to those in the BATS Filing. Specifically, if a party to an Obvious Error determination requests within thirty (30) minutes after the party is given notification of the initial determination being appealed, an Obvious Error Panel (''OE Panel'') will review decisions made by the Exchange, including whether an Obvious Error occurred and whether the correct action was made. In addition, if a party to a Catastrophic Error determination so requests within thirty (30) minutes after being given notification of the determination, a Catastrophic Error Review Panel (''CER Panel'') will review that determination to decide if it was correct, and to decide whether the correct action was taken. An OE Panel or a CER Panel (''Appeal Panel'') may overturn or modify an action taken by the Exchange Official acting pursuant to Rule 6.87. All determinations by an Appeal Panel constitute final action by the Exchange on the matter at issue.

[17] *See* Securities Exchange Act Release No. 60527 (August 18, 2009), 74 FR 43178 (August 26, 2009) (approval for SR–NYSEArca–2009–45 as amended).

The Exchange proposes to maintain its current appeals process in connection with the Proposed Rule and relocate the existing rule text. As proposed, Current Rule 6.87(c) would be renumbered as Rule 6.87(k)(1) and Current Rules 6.87(d)(3)(D)–(F) would be renumbered as Rule 6.87(k)(2). The Exchange also proposes to make technical edits to certain rule cites within the relocated provisions to reflect the numbering convention of the Proposed Rule.

As proposed, portions of Current Rule 6.87(c) would be renumbered as Rule 6.87(k)(1) and Current Rules 6.87(d)(3)(D) and (F) would be renumbered as Rule 6.87(k)(2). Also, because the selection criteria and composition of members for both OE Panels and CER Panels are identical, the Exchange proposes to combine existing Rules 6.87(c)(A)–(B) and Rule 6.87(d)(3)(E) into one common provision under proposed Rule 6.87(k)(3). In conjunction with the creation of one common rule, the Exchange proposes to rename the CER Panel as the Catastrophic Error Panel (''CE Panel''). The Exchange believes these changes will make for a concise and more easily navigable rule. The Exchange also proposes to make technical edits to certain rule cites within the relocated provisions to reflect the new numbering convention of the Proposed Rule.

Limit Up-Limit Down Plan—Proposed Commentary .03 to Rule 6.87

The Exchange is proposing to adopt Commentary .03 to the Proposed Rule to provide for how the Exchange would treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan''),[18] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[19] Under the Proposed Rule, during a pilot period to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan, an execution would not be subject to review as an Obvious Error or Catastrophic Error pursuant to paragraph (c) or (d) of the Proposed Rule if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the Plan. The Exchange, however, proposes to retain authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of the Proposed Rule and to bust or adjust transactions pursuant to the proposed Significant Market Event provision, the proposed trading halts provision, the proposed provisions with respect to erroneous prints and quotes in the underlying security, or the proposed provision related to stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards would provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices would stand irrespective of subsequent moves in the underlying security.

During a Limit or Straddle State, options prices may deviate substantially from those available immediately prior to or following such States. Thus, determining a Theoretical Price in such situations would often be very subjective, creating unnecessary uncertainty and confusion for investors. Because of this uncertainty, the Exchange is proposing to specify in Commentary .03 that the Exchange would not review transactions as Obvious Errors or Catastrophic Errors when the underlying security is in a Limit or Straddle State.

The Exchange notes that there are additional protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers. First, the Exchange rejects all un-priced options orders received by the Exchange (*i.e.,* Market Orders) during a Limit or Straddle State for the underlying security. Second, SEC Rule 15c3–5 requires that, ''financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous.'' [20] Third, the Exchange has price checks applicable to limit orders that reject limit orders that are priced sufficiently far through the national best bid or national best offer (''NBBO'') that it seems likely an error occurred. The rejection of Market Orders, the requirements placed upon broker dealers to adopt controls to prevent the entry of orders that appear to be erroneous, and Exchange functionality that filters out orders that appear to be erroneous, all serve to sharply reduce the incidence of erroneous transactions.

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from OTP Holder and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in the month during which the proposal is approved, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
  - Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
  - high execution price, low execution price;
  - number of trades for which a request for review for error was received during Straddle and Limit States;
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if

[18] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (order approving the Plan on a pilot basis).

[19] 17 CFR 242.600(b)(47).

[20] *See* Securities and Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791 (November 15, 2010) (File No. S7–03–10).

applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, by May 29, 2015, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan. The Exchange notes that the pilot program is intended to run concurrent with the pilot period of the Plan, which has been extended to October 23, 2015. The Exchange proposes to reflect this date in the Proposed Rule.

No Adjustments to a Worse Price—Proposed Commentary .04 to Rule 6.87

Finally, the Exchange proposes to adopt Commentary .04, (currently Reserved) to Rule 6.87, which would make clear that to the extent the provisions of the Proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Additional Exchange Provisions

As noted above, the proposed changes to Current Rule 6.87 are substantially similar to those recently approved as part of the BATS Filing. The Exchange notes that certain provisions of BATS Rule 20.6 are located in Exchange rules other than Rule 6.87. Additionally, Current Rule 6.87 contains various provisions that were not part of the BATS Filing but will be maintained by the Exchange and incorporated in the Proposed Rule. A description of each is shown below.

NYSE Arca Rule 6.77A [21] provides that a trade on the Exchange may be nullified or adjusted if the parties to the trade agree to the nullification or adjustment. Any adjustment or nullification must be authorized by the Exchange and any adjustment must be to a permissible price and in compliance with any applicable rules of the Exchange or the Securities and Exchange Commission at the time the original transaction was executed. Rule 6.77A is similar in scope to the rule text found in the opening paragraph of BATS Rule 20.6 and offers market participants the same opportunity to mutually agree to adjust or nullify a trade as provided by the BATS rule. The Exchange notes that notification procedures and reporting deadlines applicable to the adjustment or nullification of trades based on mutual agreement, was not within the scope of the industry-wide harmonization effort. Accordingly, the Exchange does not propose to relocate or amend Rule 6.77A.

Current Rule 6.87(a)(6) permits transactions in series where the NBBO bid is zero to be nullified under certain circumstances, regardless of whether the execution occurred at an erroneous price, pursuant to Obvious Error guidelines (''No-bid Rule''). The Exchange notes that former BATS Rule 20.6(b)(2), which was similar in scope to Rule 6.87(a)(6), was not part of the amended rule set included in the BATS Filing. Thus, the Exchange proposes to delete Rule 6.87(a)(6) in its entirely, to further harmonize trade nullification rules across the options industry.

Current Rule 6.87(a)(7) governs Obvious Errors involving Complex Orders. The process for the handling of for Obvious Errors on Complex Orders was outside of the scope of the industry wide effort to harmonize Obvious and Catastrophic Error rules, and was not addressed in the BATS Filing. The Exchange notes that it will maintain the rule text from Current Rule 6.87(a)(7), in Proposed Rule 6.87(c)(5). To ensure that the Proposed Rule is consistent with other Exchange rules, the Exchange proposes to delete language in paragraph (A) of the rule referencing trades eligible to be adjusted or busted pursuant to paragraph (a)(6)—as this provision would be rendered obsolete by the proposed deletion of the No-bid Rule as discussed above.

Current Commentary .01 states that determinations regarding Obvious Errors and Catastrophic Errors made by the Exchange will be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration. The rights to submit a dispute to arbitration under this Commentary is limited to rulings involving Obvious and Catastrophic Errors made pursuant to Current Rule 6.87(b) and (d)(3) and any appeal of such rulings. The Exchange does not propose to expand the applicability of this Commentary to the newly proposed provisions of the harmonization effort (*i.e.* Significant Market Events) but does proposes to amend rule cites within this Commentary to reflect the numbering convention of the Proposed Rule.

Implementation Date

The Exchange will announce the effective date of the proposed changes in a Trader Update distributed to all OTP Holders and OTP Firms. The effective date will be no sooner than May 8, 2015, the scheduled implementation date of the BATS Filing, which serves as the basis for the Proposed Rule. The Current Rule will remain in force until the Proposed Rule is implemented.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[22] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [23] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act [24] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than

[21] *See* Securities Exchange Act Release No. 73909 (December 22, 2014), 79 FR 78522 (December 30, 2014) (Notice of filing and immediate effectiveness of SR–NYSEArca–2014–140).

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5).

nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many OTP Holders, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with Section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Commentary .04 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with Section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Trading Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, OTP Holders representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted

above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any OTP Holder submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that OTP Holder has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by an OTP Holder representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by an OTP Holder that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event an OTP Holder has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their

positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with Section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to review, nullification and/or adjustment of erroneous transactions during a trading halt (including the proposed cross reference to Rule 6.65 Commentary .04), an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to Stop Orders and Stop Limit Orders is likewise consistent with Section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process for Obvious Errors and Catastrophic Errors as the Exchange maintains under the Current Rule is consistent with the Act because such process provides OTP Holders with due process in connection with decisions made by Exchange Officials under the Proposed Rule. The Exchange also believes that the proposed appeals process is appropriate with respect to financial penalties for appeals that result in a decision of the Exchange being upheld, including the proposed new fee for an unsuccessful appeal of a Catastrophic Error determination, because it discourages frivolous appeals, thereby reducing the possibility of overusing Exchange resources that can instead be focused on other, more productive activities. The Exchange believes that the appeal process and the selection of panelists to sit on a panel provides fair representation of OTP Holders by ensuring diversity amongst the members of any Obvious Error or Catastrophic Error Panel, which is consistent with Sections 6(b)(3) and 6(b)(7) of the Act.

With regard to the portion of the Exchange's proposal related to the applicability of the Obvious Error Rule when the underlying security is in a Limit or Straddle State, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act because it will provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Further, the Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude from Rule 6.87 those transactions executed during a Limit or Straddle State.

The Exchange believes the application of the Proposed Rule without the

proposed provision would be impracticable given the lack of reliable NBBO in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Proposed Rule change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system.

Moreover, given the fact that options prices during brief Limit or Straddle States may deviate substantially from those available shortly following the Limit or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit or Straddle States. In this respect, the Exchange notes that only those orders with a limit price will be executed during a Limit or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

The Exchange notes that under certain limited circumstances the Proposed Rule will permit the Exchange to review transactions in options that overlay a security that is in a Limit or Straddle State. Specifically, an Official will have authority to review a transaction on his or her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will have the authority to adjust or nullify transactions in the event of a Significant Market Event, a trading halt in the affected option, an erroneous print or quote in the underlying security, or with respect to stop and stop limit orders that have been triggered based on erroneous trades. The Exchange believes that the safeguards described above will protect market participants and will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review those transactions that occur during a Limit or Straddle State would allow the Exchange to account for unforeseen circumstances that result in Obvious or Catastrophic Errors for which a nullification or adjustment may be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Similarly, the ability to nullify or adjust transactions that occur during a Significant Market Event or trading halt, erroneous print or quote in the underlying security, or erroneous trade in the option (*i.e.,* Stop and Stop Limit orders) may also be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will administer this provision in a manner that is consistent with the principles of the Act and will create and maintain records relating to the use of the authority to act on its own motion during a Limit or Straddle State or any adjustments or trade breaks based on other proposed provisions under the Rule.

Finally, the Exchange believes that eliminating the Rule 6.87(a)(6) is consistent with the Act because it would encourage internal consistency in Exchange rules and would further industry-wide harmonization of obvious error rules, which, in turn, aids in providing consistent results for market participants across U.S. options exchanges when seeking relief from erroneously priced transactions.

Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca believes the entire proposal is consistent with Section 6(b)(8) of the Act [25] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the

[25] 15 U.S.C. 78f(b)(8).

protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[26] and Rule 19b–4(f)(6) thereunder.[27]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[28]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2015–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–41, and should be submitted on or before June 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11605 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74909; File No. SR–CTA/CQ–2015–01]

Consolidated Tape Association; Notice of Filing of the Twenty Second Substantive Amendment to the Second Restatement of the CTA Plan and Sixteenth Substantive Amendment to the Restated CQ Plan

May 8, 2015.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on April 27, 2015, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'')[3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the ''Plans'').[4] The amendments represent the 22nd Substantive Amendment to the CTA Plan and 16th Substantive Amendment to the CQ Plan (collectively ''the Amendments''). The Amendments propose to require the Participants to include timestamps in the trade-report and bid-and-offer information that they report to the Plans' processor.

The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each participant executed the proposed Amendments. The Participants are: BATS Exchange, Inc. (''BATS''), BATS–Y Exchange, Inc. (BATS–Y), Chicago Board Options Exchange, Inc. (CBOE), EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange, LLC (''ISE''), NASDAQ OMX BX, Inc. (''Nasdaq BX''), NASDAQ OMX PHLX, Inc. (''Nasdaq PSX''), Nasdaq Stock Market LLC (''Nasdaq''), National Stock Exchange (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca'').

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

I. Rule 608(a)

A. Purpose of the Amendments

Section VI(c) of the CTA Plan specifies that the format for a trade's last sale price information that a Participant reports to the Processor under the CTA Plan shall include the stock symbol, the number of shares and the price of the transaction. Section VI(a) of the CQ Plan provides that each bid and offer that a Participant reports to the Processor under the CQ Plan shall be accompanied by the bid or offer's quotation size or aggregate quotation size.

The Amendments propose to add to those requirements that Participants shall also include in reports to the Processor the time of the trade or the quotation.

In the case of a Participant that is a national securities exchange, the time of the transaction or quotation is to be reported in microseconds as identified in the Participant's matching engine publication timestamp.

In the case of FINRA, the time of a transaction shall be the time of execution that a FINRA member reports to a FINRA trade reporting facility and the time of a bid or offer shall be the quotation publication timestamp that the bidding or offering member reports to the FINRA quotation facility, all in accordance with FINRA rules.

In addition, if the FINRA trade reporting facility or quotation facility provides a proprietary feed of trades or quotes reported by the facility to the Processor, then the FINRA facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed.

FINRA shall convert times that its members report to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor in microseconds.

The Participants believe that adding timestamps to the elements that Participants must report in connection with trade reports and bids and offers will improve transparency regarding the latencies between the CTA and CQ Plans' consolidated data feeds and industry proprietary feeds. Users of the consolidated feeds would be better able to monitor the latency of those feeds and to assess whether such feeds meet their trading and other requirements.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of the Amendments

All of the Participants have manifested their approval of the proposed Amendments by means of their execution of the Amendments. The Plan Amendments would become operational upon approval by the Commission.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The proposed Amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. They will improve transparency regarding the latencies between the CTA and CQ Plans' consolidated data feeds and industry proprietary feeds and will allow investors to monitor the latency of those feeds and to assess whether such feeds meet their trading and other requirements.

The Participants do not believe that the proposed plan Amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.[5]

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

See Item I.C above.

H. Description of Operation of Facility Contemplated by the Proposed Amendments

Not applicable.

I. Terms and Conditions of Access

See Item I.A above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

See Item I.A above.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

See Item I.A above.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

The Amendments propose to add timestamps to Participant reports of trades. The addition of timestamps should provide investors with a more complete picture of trades, making those reports more complete and more accurate.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks general comments on the Amendments. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments are 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–CTA/CQ–2015–01 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–CTA/CQ–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 Amendments that

[5] 15 U.S.C. 78K–1(c)(1)(D).

are filed with the Commission, and all written communications relating to the Amendments 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 Amendments also will be available for inspection and copying at the principal office of the CTA.

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–CTA/CQ–2015–01 and should be submitted on or before June 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11621 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74919; File No. SR–Phlx–2015–43]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1092

May 8, 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 May 8, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to replace current Rule 1092 (''Current Rule''), entitled ''Obvious Errors and Catastrophic Errors,'' with new Rule 1092 (''Proposed Rule''), entitled ''Nullification and Adjustment of Options Transactions including Obvious Errors.'' Rule 1092 relates to the adjustment and nullification of electronic options transactions that occur on the Exchange.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) Certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent

[6] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Disputes regarding trades that occur on the options trading floor are addressed by Rule 124.

with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Priority Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' to make clear that this term would not include any broker-dealer or professional.[4] Although other portions of the Exchange's rules address the capacity of market participants, including customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to define the term ''Official'' to mean an ''Options Exchange Official'' as that term is currently defined in Rule 1(w). Specifically, an Options Exchange Official is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual transactions as follows:

Number of contracts per execution	Adjustment—TP plus/minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more ...	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an

[4] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds, the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[5] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[6] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential

[5] *See* 17 CFR 240.10b–18(a)(5)(ii).

[6] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a long enough time for market participants to receive, process and account for and respond to new market information.[7] While introducing this new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

[7] *See, e.g.,* Rule 1080(c)(ii)(C), which requires certain orders to be exposed for at least one second before they can be executed; *see also* Securities Exchange Act Release No. 66306 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BX–2011–084) (order granting approval of proposed rule change to reduce the duration of the PIP from one second to one hundred milliseconds).

Transactions at the Open

Under the Proposed Rule, for a transaction occurring as part of the Opening Process [8] the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described above. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described above, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 x $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described above. The Exchange believes that it is necessary to determine theoretical price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine theoretical price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify an Official in the manner specified from time to time by the Exchange in a notice distributed to members and member organizations. The Exchange currently requires electronic notification through a web-based application but believes that maintaining flexibility in the Rule is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed

[8] *See* Exchange Rule 1017 for a description of the Exchange's Opening Process.

through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Exchange Officer may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Exchange Officer the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Exchange Officer that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Exchange Officer to act as soon as possible after becoming aware of the transaction; action by the Exchange Officer would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Exchange Officer shall act no later than 8:30 a.m. Eastern Time on the next trading day following the date of the transaction in question.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Exchange Officer's review on his or her own motion may appeal such determination in accordance with paragraph (k), which is described below. The Proposed Rule would make clear that a determination by an Exchange Officer not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Exchange Officer's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Exchange Officer.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.

• Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.

• The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.

• Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.

• The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.

• However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract, however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any member or member organization submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that member or member organization has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one member or member organization could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[9] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a member or member organization has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by an Official by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify an Official within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify an Official in the manner specified from time to time by the Exchange in a notice distributed to members and member organizations. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by an Official pursuant to the table below.

[9] The Exchange notes that in the third quarter of this year across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[10] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a the Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion

[10] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

equals or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: Sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a member or member organization has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a Significant Market Event that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 20.6(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that a trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and equitable principles of trade for any member or member organization to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a member or member organization is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Regulatory Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Exchange Rule 1047 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to make clear in the Proposed Rule that it will nullify any transaction that occurs during a trading halt in the affected option. If any trades occur notwithstanding a trading halt then the Exchange believes it appropriate to nullify such transactions. While the Exchange may halt options trading for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

The Exchange proposes to adopt Commentary .03 to Rule 1092.

Currently, Rule 1092(c)(iv) states that the Exchange will nullify any transaction that occurs: (a) During a trading halt in the affected option on the Exchange; (b) with respect to equity options (including options overlying ETFs), during a trading halt on the primary listing market for the underlying security; (c) respecting index options, the trade occurred during a trading halt on the primary market in (1) underlying securities representing more than 10 percent of the current index value for stock index options, or (2) either component security of an Alpha Index for Alpha Index options; or (d) respecting Treasury security options, the trade occurred during a trading halt of the underlying Treasury security instituted by the United States Government. The Exchange proposes to relocate this provision to Commentary .03.

Erroneous Print and Quotes in Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies an Official in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. The Exchange believes that one second is an appropriate amount of time in which an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify an Official within the timeframes set forth in the Obvious Error provision described above. The Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying is trading in the $49.00–$50.00 price range then has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based off of this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies an Official in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average quote width will be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[11] Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify an Official in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each member or member organization to notify the Exchange if such member or member organization believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual members or member organizations. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a member or member organization has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could trigger based off of this new quoted price in the interim. Because the price that triggered such trades was not a valid price, it would be appropriate to review said option trades.

Stop (and Stop-Limit) Order Trades Triggered by Erroneous Trades

The Exchange notes that certain market participants and their customers enter stop or stop limit orders that are triggered based on executions in the marketplace. As proposed, transactions resulting from the triggering of a stop or stop-limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies an Official in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly triggered because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction pursuant to the Proposed Rule it must notify an Official within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the stop or stop-limit order.

[11] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See e.g.,* CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

Linkage Trades

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Options Order Protection and Locked/Crossed Market Plan [12] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the member or member organization and The Options Clearing Corporation (''OCC'') of the adjustment or nullification. Thus, the Exchange believes that the proposed provision adds additional transparency to the Proposed Rule.

Verifiable Disruption or Malfunction of Exchange Systems

The Exchange proposes to retain its provision regarding a verifiable disruption or malfunction in Exchange systems, which appears in subparagraphs (c)(ii)(A) and (B) of the Current Rule. Specifically, parties to a trade may have a trade nullified or its price adjusted if the trade resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (*e.g.* a quote/order that is frozen, because of an Exchange system error, and repeatedly traded). Similarly, parties to a trade may have a trade nullified or its price adjusted if it resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order.

[12] *See* Rule 1083(n).

Appeals

The Exchange proposes to maintain its current appeals process (currently in Rule 1092(g)) in connection with the Proposed Rule. Specifically, if a party affected by a determination made under the Proposed Rule so requests within the time permitted, the Market Operations Review Committee will review decisions made under the Proposed Rule in accordance with Exchange Rule 124(d). A request for review under this paragraph must be made within 30 minutes after a party receives verbal notification of a final determination by an Official under this Rule, except that if such notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to request a review. Such a request for review must be in writing or otherwise documented. The Market Operations Review Committee shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day. In addition, the Exchange is proposing to harmonize with other exchanges that any determination by an Official or the Market Operations Review Committee shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.[13]

In order to maintain a diverse group of participants, the Market Operations Review Committee will continue to consist of a number of Member Representative members [14] that is equal to at least 20 percent of the total number of members of the Market Operations Review Committee; no more than 50 percent of the members of the Market Operations Review Committee shall be engaged in market making activity or employed by a Member firm whose revenues from market making activity exceed 10 percent of its total revenues.[15] The Market Operations Review Committee may continue to act as a panel with a minimum of three Committee members, of which no more than 50% can be engaged in market making activity or employed by an Exchange member organization whose revenues from market making activity exceed ten percent of its total revenues.[16] To assure fairness, members of the Market Operations Review Committee, like all members of Board Committees, are subject to a conflict of interest prohibition.[17]

Complex Orders

The Exchange is proposing to adopt Commentary .01 to the Proposed Rule to provide for how the Exchange will treat Obvious and Catastrophic Errors respecting complex order executions.[18] The Proposed Rule will be identical to the Current Rule.[19] If both parties to a trade that is one component of a complex order execution are parties to all of the trades that together comprise the execution of a complex order at a single net debit or credit, then if one of those component trades can be nullified under this Rule 1092, all component trades that were part of the same complex order shall be nullified as well. This is intended to mitigate the risk to parties using complex orders, where part or all of a complex order traded at an erroneous price.[20]

No Adjustments to a Worse Price

Finally, the Exchange proposes to include Commentary .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Limit Up-Limit Down Plan

The Exchange proposes to amend Rule 1047(f)(v) to reflect the numbering and content of the Proposed Rule. It will then continue to cover how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan),[21] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[22]

[13] *See e.g.,* The NASDAQ Options Market Rules, Chapter V, Section 6(g)(iv).

[14] A Member Representative Member is a member appointed by the Board of Directors who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the Exchange's By-Laws. *See* By-Law Article I, Section 1(x).

[15] *See* By-Law Article V, Section 5–3(d).

[16] *See* Rule 124(d)(i).

[17] *See* By-Law Article III, Section 3–4(a).

[18] The process for complex order executions is governed by Rule 1080.07.

[19] *See* Rule 1092(c)(v).

[20] *See* Securities Exchange Act Release No. 63692 (January 11, 2011), 76 FR 2940 (January 18, 2011).

[21] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[22] 17 CFR 242.600(b)(47).

Implementation Date

In order to ensure that other options exchanges are able to adopt rules consistent with this proposal and to coordinate the effectiveness of such harmonized rules, the Exchange proposes to delay the operative date of this proposal to May 8, 2015.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[23] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [24] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act [25] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many members and member organizations, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutual agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct erroneous transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any member or member organization to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with Section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Commentary .02 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with Section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5).

because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, members or member organizations representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any member or member organization submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that member or member organization has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by a member or member organization representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by a member or member organization that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading

activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a member or member organization has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with Section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to stop and stop limit orders is likewise consistent with Section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair

principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process as the Exchange maintains under the Current Rule is consistent with the Act because such process provides members and member organizations with due process in connection with decisions made by Officials under the Proposed Rule. The Exchange believes that this process provides fair representation of members and member organizations by ensuring diversity amongst the members of any review panel, which is consistent with Sections 6(b)(3) and 6(b)(7) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx believes the entire proposal is consistent with Section 6(b)(8) of the Act [26] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [27] and Rule 19b–4(f)(6) thereunder.[28]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2015–43 on the subject line.

[26] 15 U.S.C. 78f(b)(8).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[29] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–Phlx–2015–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–43, and should be submitted on or before June 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11588 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74918; File No. SR–MIAX–2015–35]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Nullification and Adjustment of Options Transactions Including Obvious Errors

May 8, 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 May 7, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal to replace current Exchange Rule 521 (the ''Current Rule''), entitled ''Obvious and Catastrophic Errors,'' with new Exchange Rule 521 (the ''Proposed Rule''), entitled ''Nullification and Adjustment of Options Transactions Including Obvious Errors.'' Rule 521 relates to the adjustment and nullification of transactions that occur on the Exchange's options trading platform (the ''System'' [3] or the ''MIAX System''). The Exchange also proposes to amend Exchange Rule 504, Trading Halts, and to delete current Exchange Rule 531, Trade Nullification and Price Adjustment Procedure.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The instant Proposed Rule Change is the culmination of a coordinated effort by the options exchanges to address the August 22, 2013, halt of trading in Nasdaq-listed securities (''Nasdaq SIP Failure''). Following the Nasdaq SIP Failure, the Chair of the Commission met with the heads of the securities exchanges to discuss potential initiatives aimed at addressing market resilience.[4] The Proposed Rule responds to the Chair's initiative, and reflects discussions by the options exchanges to universally adopt: (1) certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions.

The Exchange is proposing additional objective standards in the Proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] *See* SEC Press Release No. 2013–178 (September 12, 2013), *available at http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539804861.*

Rule as compared to the Current Rule. The Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions and their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable National Best Bid/Offer (''NBBO'') is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. This initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

The Exchange believes that the Proposed Rule is consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. The Exchange believes that the differences in market structure between equities and options markets continue to support the distinctions between the rules for handling obvious errors in the equities and options markets.

The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets. Various structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Options market participants can generally create new open interest in response to trading demand. As new open interest is created, trades in the underlying security or related option series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. The Exchange believes that hedging transactions commonly engaged in by options market participants necessitates protection of transactions through adjustments rather than nullifications when possible and appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. This breadth in options series renders the options markets more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. Due to the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that trades of option liquidity providers should be protected because such liquidity providers typically engage in hedging activity to reduce potential significant financial risk. This should foster and promote continued liquidity provision and maintenance of the quote-driven options markets.

Furthermore, there are other fundamental differences between options and equities markets that support the different treatment of specific categories of participants, as reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly more retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches an exchange and is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalized executions. Because of such direct retail customer participation, the options exchanges have taken steps to afford those retail customers—generally Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' for purposes of the new Rule as a Priority Customer [5] to make clear that this term would not include any broker-dealer or non-Priority Customer. Although other portions of the Exchange's rules address the various categories of market participants, including Customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer [6] are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to adopt a definition of ''Official,'' which

[5] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[6] Hereinafter, references to ''Customer'' mean ''Priority Customer.'' *See id.*

would mean an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of the Proposed Rule.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual transactions as follows:

Number of contracts per transaction	Adjustment: theoretical price (as defined below) plus/pinus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[7] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes should be in proportion to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying provisions governing transactions at the open of trading on each trading day; situations in which there are no quotes or no valid quotes (as defined below); and when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable.

Transactions at the Open

Under the Proposed Rule, for a transaction occurring as part of the Opening Process (as described in Exchange Rule 503), the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described below. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described below, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 × $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the bid/ask differential for the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described below. The Exchange believes that it is necessary to determine Theoretical Price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine Theoretical Price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

No Valid Quotes

Pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the

[7] *See* 17 CFR 240.10b–18(a)(5)(ii).

transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[8] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a sufficient time for market participants to receive, process and account for and respond to new market information.[9] While introducing this new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision on the bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with a size of 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted obvious or catastrophic error notification (described below) and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The

[8] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

[9] *See, e.g.,* Exchange Rules 520(b) and (c), which require certain orders to be exposed on the MIAX System for at least one second before they can be executed.

Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify MIAX Regulatory Control (''MRC'') in the manner specified from time to time on the Exchange's Web site. The Exchange currently requires electronic notification through a web-based process but believes that maintaining flexibility in the Rule is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a party that believes that it participated in a transaction that was the result of an Obvious Error must submit a notification to MRC (an ''obvious error notification'') within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange.

Specifically, under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to submit an obvious error notification to MRC for review of transactions routed to the Exchange from that options exchange and executed on the Exchange pursuant to the Options Order Protection and Locked/Crossed Market Plan [10] (such trades are hereinafter referred to as ''Linkage Trades''). This includes obvious error notifications on behalf of another options exchange submitted by a third-party routing broker if such third-party broker identifies the affected transactions as Linkage Trades. In order to facilitate timely reviews of Linkage Trades the Exchange will accept obvious error notifications from either the other options exchange or, if applicable, the third-party routing broker that routed the affected order(s). The additional fifteen (15) minutes provided with respect to Linkage Trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely obvious error notification from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order).

The Exchange believes that additional time for obvious error notifications related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to Linkage Trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time obvious error notifications were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Official may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Official the ability to provide parties relief in those situations where they have failed to submit an obvious or catastrophic error notification within the established time period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Official that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Official to act as soon as possible after becoming aware of the transaction; action by the Official would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Official shall act no later than 8:30 a.m. Eastern Time on the next trading day following the date of the affected transaction.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Official's review on his or her own motion may appeal such determination in accordance with paragraph (l), which is described below. The Proposed Rule would make clear that a determination by an Official not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Official's own motion is not appealable, and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Official.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	0.15
At or above $3.00	$0.30	0.30

[10] As defined in Exchange Rule 1400(n).

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties to the transaction should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract. However, the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any Member submits an obvious error notification pursuant to the Proposed Rule, and in the aggregate that Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions.

The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one Member could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[11] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Member has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive an obvious error notification within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	$1.00
Above $5.00 to $10.00	$1.50
Above $10.00 to $20.00	$2.00
Above $20.00 to $50.00	$2.50
Above $50.00 to $100.00	$3.00
Above $100.00	$4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review (a ''catastrophic error notification'') must be received by MRC by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must

[11] The Exchange notes that in the third quarter of 2014 across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

submit a catastrophic error notification to MRC within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify MRC in the manner specified from time to time on the Exchange's Web site. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to account for these two categories of errors because the Catastrophic Error provisions provide market participants with a longer time period within which they may submit a catastrophic error notification to MRC than the time period for an obvious error notification. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit an obvious error notification in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP Plus	Sell transaction adjustment—TP Minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	$1.00	$1.00
Above $5.00 to $10.00	$1.50	$1.50
Above $10.00 to $20.00	$2.00	$2.00
Above $20.00 to $50.00	$2.50	$2.50
Above $50.00 to $100.00	$3.00	$3.00
Above $100.00	$4.00	$4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the affected parties should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for the submission of an obvious error notification), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[12] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single

[12] Although the Exchange has proposed a specific provision related to coordination among options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion equals or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: Sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a member has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there are transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a Significant Market Event that is triggered by a large and

aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty if the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 521(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	$0.30	$0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that a trade may be nullified or adjusted on the terms upon which all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and

equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a Member is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Regulatory Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Current Exchange Rule 521(c)(4) states that trades on the Exchange will be nullified when: (i) The trade occurred during a trading halt in the affected option on the Exchange; or (ii) respecting equity options (including options overlying ETFs), the trade occurred during a trading halt on the primary market for the underlying security. The Exchange proposes to include this language in proposed new Interpretations and Policies .04 to Exchange Rule 504, Trading Halts. Proposed new Rule 521(f) will refer to this provision by stating that the Exchange shall nullify any transaction that occurs during a trading halt in the affected option on the Exchange or respecting equity options (including options overlying ETFs), the trade occurred during a trading halt on the primary market for the underlying security, pursuant to Exchange Rule 504. The Exchange believes it appropriate to nullify transactions that occur during a trading halt. While the Exchange may halt options trading for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

Erroneous Print and Quotes in the Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or nullified as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies MRC in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified, and for one second thereafter. The Exchange believes that one second is an appropriate amount of time within which the price of an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must submit an obvious error notification to MRC within the timeframes set forth in the Obvious Error provision described above. The Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the notification timeframe to be measured will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying security is trading in the $49.00–$50.00 price range and has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based on this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or nullified as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies MRC in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a bid/ask differential of at least $1.00 and has a bid/ask differential at least five times greater than the average bid/ask differential for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average bid/ask differential will be determined by adding the bid/ask differentials of sample quotes at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[13] Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify MRC in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each Member to notify the Exchange if such Member believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual Members. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a Member has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying security is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly

[13] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See, e.g.,* CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying security has gone through a dramatic price revaluation, numerous options trades could trigger based on this new quoted price in the interim. Because the price that triggered such trades was not a valid price it would be appropriate to review the affected option trades.

Stop and Stop Limit Order Trades Elected by Erroneous Trades

The Exchange notes that certain market participants and their customers enter stop or stop limit orders that are elected based on executions in the marketplace. As proposed, transactions resulting from the election of a stop or stop-limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies MRC in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly elected because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction pursuant to the Proposed Rule it must notify MRC within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that elected the stop or stop limit order.

Order Protection

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Options Order Protection and Locked/Crossed Market Plan that results in a Linkage Trade, and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not using its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the Member and the Options Clearing Corporation (''OCC'') of the adjustment or nullification. Thus, the Exchange believes that the proposed provision adds additional transparency to the Proposed Rule.

Verifiable Disruptions or Malfunctions of Exchange Systems

The Proposed Rule will include the same language found in the Current Rule concerning nullification and adjustment of trades that are the result of a verifiable system disruption or malfunction.

Specifically, the Proposed Rule will provide that, absent mutual agreement, parties to a trade may have a trade nullified or its price adjusted if any such party makes a documented request within the time specified in Rule 521(c)(2), and either (1) the trade resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (*e.g.* a quote/order that is frozen, because of an Exchange System error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or (2) the trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a Member from updating or canceling a quote/order for which the Member is responsible where there is Exchange documentation providing that the Member sought to update or cancel the quote/order.

An Official may act on his/her own motion pursuant to Rule 521(c)(3) to nullify or adjust a trade resulting from a verifiable disruption or malfunction of an Exchange system.[14]

Appeal

The Exchange proposes generally to maintain its current process for the review of Official decisions on appeal under the Proposed Rule with certain adjustments to accommodate the harmonized rules. Specifically, if a party affected by a determination made under the Proposed Rule requests a review of an Official decision (an ''appeal'') within the time permitted, the Exchange's Chief Regulatory Officer (''CRO'') or his/her designee will review decisions made under the Proposed Rule. An appeal must be submitted within thirty minutes after a party receives official notification of a final determination by an Official under the Proposed Rule. The CRO or his/her designee shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. Decisions respecting appeals that are received after 3:00 p.m. Eastern Time will be rendered as soon as practicable, but in no event later than the trading day following the date of the execution under review.[15]

In the absence of the CRO, a designee of the CRO will be appointed to act in this capacity. Consistent with the Current Rule, a Member that submits an appeal seeking the review of an Official ruling shall be assessed a fee of $250.00 for each Official ruling to be appealed that is sustained and not overturned or modified by the CRO, and decisions of the CRO concerning (i) the review of Official rulings relating to the nullification or adjustment of transactions, and (ii) initial requests for relief shall be final and may not be appealed to the Exchange's Board. Any determination by an Officer or by the CRO or his/her designee shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

Limit Up/Limit Down

The Exchange is proposing to adopt Interpretation and Policy .01 to the Proposed Rule to provide for how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''LULD Plan''),[16] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[17] Under the Proposed Rule, during a pilot period to coincide with the pilot period for the LULD Plan, including any extensions to the pilot period for the LULD Plan, an execution will not be subject to review as an Obvious Error or Catastrophic Error

[14] Proposed Rule 521(c)(3) states that an Official may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. A transaction reviewed pursuant to the Proposed Rule may be nullified or adjusted only if it is determined by the Official that the transaction is erroneous in accordance with the provisions of this Rule, provided that the time deadlines of sub-paragraph (c)(2) above shall not apply.

[15] This is distinguished from the Current Rule, which states that if such notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to request a review.

[16] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (Order approving the LULD Plan on a pilot basis). *See also,* Securities Exchange Act Release No. 74307 (February 19, 2015), 80 FR 10196 (February 25, 2015)(SR–MIAX–2015–11)(Notice of Filing and Immediate Effectiveness Extending the MIAX LULD pilot through October 23, 2015).

[17] 17 CFR 242.600(b)(47).

pursuant to paragraph (c) or (d) of the Proposed Rule if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the LULD Plan.

Nonetheless, the Exchange proposes to retain authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of the Proposed Rule or a nullification or adjustment pursuant to the proposed Significant Market Event provision, the proposed trading halts provision, the proposed provisions with respect to erroneous prints and quotes in the underlying security, or the proposed provision related to stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security.

During a Limit or Straddle State, options prices may deviate substantially from those available immediately prior to or following such States. Thus, determining a Theoretical Price in such situations would often be very subjective, creating unnecessary uncertainty and confusion for investors. Because of this uncertainty, the Exchange is proposing to amend Rule 521 to provide that the Exchange will not review transactions as Obvious Errors or Catastrophic Errors when the underlying security is in a Limit or Straddle State.

The Exchange notes that there are additional protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers. First, the Exchange rejects all un-priced options orders received by the Exchange (*i.e.,* Market Orders) during a Limit or Straddle State for the underlying security. Second, SEC Rule 15c3–5 requires that, ''financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous.'' [18] Third, the Exchange has limit order price checks that result in the rejection of limit orders that are priced sufficiently far through the NBBO that it seems likely an error occurred. The rejection of Market Orders, the requirements placed upon broker dealers to adopt controls to prevent the entry of orders that appear to be erroneous, and Exchange functionality that filters out orders that appear to be erroneous, will all serve to sharply reduce the incidence of erroneous transactions.

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from Members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in the month during which the proposal is approved, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
- Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
- high execution price, low execution price;
- number of trades for which a request for review for error was received during Straddle and Limit States;
- an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, by May 29, 2015, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Limit and Straddle States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the LULD Plan. The Exchange notes that the pilot program is intended to run concurrently with the pilot period of the LULD Plan, which has been extended to October 23, 2015.[19] The Exchange proposes to reflect this date in the Proposed Rule.

No Adjustment to a Worse Price

Finally, the Exchange proposes to include Interpretation and Policy .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Deletion of Current Exchange Rule 531

The Exchange proposes to delete current Exchange Rule 531, Trade Nullification and Price Adjustment Procedure, which states that a trade on the Exchange may be nullified or adjusted if the parties to the trade agree to the nullification or adjustment. The Proposed Rule includes a provision stating that a trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, thus obviating the need for current Rule 531.[20] The Exchange proposes to reserve the rule number.

[18] *See* Securities and Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791 (November 15, 2010) (File No. S7–03–10).

[19] *See* Securities Exchange Act Release No. 74110 (January 21, 2015), 80 FR 4321 (January 27, 2015).

[20] In its filing to adopt Rule 531, the Exchange stated that the rule is only intended to be effective until the joint efforts by the exchanges to create uniform trade nullification and adjustment rules are approved and in effect. *See* Securities Exchange Act Release No. 73463 (October 29, 2014), 79 FR 65445 (November 4, 2014) (SR–MIAX–2014–54).

Operative Date

In order to ensure that other options exchanges are able to adopt rules consistent with this proposal and to coordinate the effectiveness of such harmonized rules, the Exchange proposes that the Proposed Rule be made operative on May 8, 2015.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [21] in general, and furthers the objectives of Section 6(b)(5) of the Act [22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act [23] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Members and their customers would rather adjust prices of executions rather than nullify the transactions and thereby lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as MIAX. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutually agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct an erroneous transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with Section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Interpretation and Policy .02 of proposed Rule 521 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with Section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, Members representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of Linkage Trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any Member submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange to apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by an Options Member representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by an Options Member that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. The Exchange believes that a market participant with more than 200 transactions under review concurrently when the orders electing such transactions were received in 2 minutes or less will have far exceeded the normal behavior of Customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect

non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Member has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were executed at prices further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above because, among other things, Customers are less likely to be watching trading throughout the day and they may have less capital with which to meet an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that the proposed rule change to adopt the Significant Market Event provision is consistent with Section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event because, typically, multiple options exchanges are impacted in such an event.

Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar.

The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to fund an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that the proposed rule change related to review, nullification and/or adjustment of erroneous transactions during a trading halt, an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to stop and stop limit orders is likewise consistent with Section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and equitable principles of

trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same process for the Request for Review of Official decisions that it maintains under the Current Rule is consistent with the Act because it affords Members with due process in connection with decisions made by Officials under the Proposed Rule which the Member may feel warrants review. The Exchange believes that this process is streamlined and efficient, thus providing persons who seek review of Obvious and Catastrophic Error decisions with an expeditious opportunity for reconsideration of such decisions. The Exchange also believes that the proposed appeals process is appropriate with respect to financial penalties for appeals that result in a decision of the Exchange being upheld because it discourages frivolous appeals, thereby reducing the possibility of overusing Exchange resources that can instead be focused on other, more productive activities. The fees with respect to such financial penalties are the same as under the Current Rule, and are equitable and not unfairly discriminatory because they will be applied uniformly to all Options Members and are designed to reduce administrative burden on the Exchange.

With regard to the portion of the Exchange's proposal related to the applicability of the Obvious Error Rule when the underlying security is in a Limit or Straddle State, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act because it will provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Further, the Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude from Proposed Rule 521 those transactions executed during a Limit or Straddle State.

The Exchange believes the application of the Proposed Rule without the proposed provision would be impracticable given the lack of a reliable NBBO in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Proposed Rule change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system.

Moreover, because options prices may deviate substantially during brief Limit or Straddle States from those available shortly following the Limit or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit or Straddle States. In this respect, the Exchange notes that only those orders with a limit price will be executed during a Limit or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

The Exchange notes that under certain limited circumstances the Proposed Rule will permit the Exchange to review transactions in options that overlay a security that is in a Limit or Straddle State. Specifically, an Official will have authority to review a transaction on his or her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will have the authority to adjust or nullify transactions in the event of a Significant Market Event, a trading halt in the affected option, an erroneous print or quote in the underlying security, or with respect to stop and stop limit orders that have been triggered based on erroneous trades. The Exchange believes that the safeguards described above will protect market participants and will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review those transactions that occur during a Limit or Straddle State would allow the Exchange to account for unforeseen circumstances that result in Obvious or Catastrophic Errors for which a nullification or adjustment may be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Similarly, the ability to nullify or adjust transactions that occur during a Significant Market Event or trading halt, erroneous print or quote in the underlying security, or erroneous trade in the option when stop and stop limit orders are elected erroneously may also be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will administer this provision in a manner that is consistent with the principles of the Act and will create and maintain records relating to the use of the authority to act on its own motion during a Limit or Straddle State or any adjustments or trade breaks based on other proposed provisions under the Rule.

Additionally, the Exchange's proposal to delete current Rule 531 is consistent with the Act in that it will promote investor protection by preventing duplication in the Exchange's rules, ensuring clarity regarding agreements to nullify or adjust trades.

With regard to the impact of this proposal on system capacity, the Exchange notes that it has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with the proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk assumed by liquidity providers quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2015–35 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–MIAX–2015–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2015–35, and should be submitted on or before June 4, 2015.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[26] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11603 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form 12b–25. SEC File No. 270–71, OMB Control No. 3235–0058.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The purpose of Form 12b–25 (17 CFR 240.12b–25) is to provide notice to the Commission and the marketplace that a public company will be unable to timely file a required periodic report or transition report pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). If all the filing conditions of the form are satisfied, the company is granted an automatic filing extension. Approximately 4,456 registrants file Form 12b–25 and it takes approximately 2.5 hours per response for a total of 11,140 burden hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: May 8, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11597 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74917; File No. SR–ICC–2015–004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to Physical Settlement of CDS Contracts

May 8, 2015.

I. Introduction

On March 11, 2015, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICC–2015–004 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on March 27, 2015.[3] The Commission received one comment.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC proposes to amend its rules to modify the terms and conditions for physical settlement of cleared CDS Contracts, and to adopt certain new delivery procedures relating to physical settlement.

Under the current terms of the ICC Clearing Rules (''ICC Rules''), upon the occurrence of a credit event under a cleared CDS Contract, the contract is typically settled in cash in accordance with the terms of the ICC Rules, which incorporate the applicable ISDA Credit Derivatives Definitions (the ''ISDA Definitions'') and the market-standard credit default swap auction methodology for determining the cash settlement price. However, in certain circumstances, such as where the Credit Derivatives Determinations Committee decides not to hold a cash settlement auction for a particular credit event, or such an auction is cancelled under the terms of the auction methodology (including because of a failure to determine the auction settlement price), the CDS Contracts provide for a fallback settlement method of physical settlement. Under physical settlement of a CDS contract generally, the protection buyer will be entitled to deliver one or more qualifying deliverable obligations to the protection seller, in which case the protection seller will be required to pay the protection buyer a defined physical settlement amount. Under the current ICC Rules, if physical settlement applies,[5] ICC will match clearing participants (''Participants'') that are protection buyers with Participants that are protection sellers in the relevant contract, and the two Participants will be responsible for effecting physical settlement between them. ICC does not itself perform or guarantee performance of physical settlement between the matched Participants. Once matching occurs, the contract is purely a bilateral contract between the matched Participants, and ICC has no further rights or obligations with respect to the contract. ICC does, however, collect and hold physical settlement margin as collateral agent on behalf of the protection buyer to secure the protection seller's obligations to the protection buyer under physical settlement.

ICC proposes to amend the ICC Rules relating to physical settlement such that ICC will be responsible for financial performance of physical settlement. ICC notes that under the amended approach, it would still require payments and deliveries in the ordinary course under physical settlement to be made directly between the matched buying Participant and selling Participant, with ICC only being obligated to make direct payments in the case of certain defined settlement failure scenarios. ICC believes that this proposed rule change will further the general policy goals of central clearing for CDS transactions, and is consistent with ICC's financial resources, risk management procedures and operational capabilities.[6]

ICC proposes to make certain amendments to Chapters 1, 4, 5, 21 and 22 of the ICC Rules. ICC also proposes

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–74563 (Mar. 23, 2015), 80 FR 16471 (Mar. 27, 2015) (File No. SR–ICC–2015–004).

[4] *See* Comment from Kermit Kubitz, dated April 17, 2015, *available at https://www.sec.gov/comments/sr-icc-2015-004/icc2015004-1.htm.*

[5] ICC notes that to date, physical settlement has not been necessary for any of the CDS Contracts cleared by ICC.

[6] ICC notes that a substantially similar approach to physical settlement is used in the ICE Clear Europe Limited CDS clearing service.

to adopt a related set of Delivery Procedures and Physical Settlement and Notices Terms. Furthermore, ICC also proposes to make certain related and conforming changes to its Risk Management Framework. All capitalized terms not defined herein are defined in the ICC Rules.

In Chapter 1 of the ICC Rules, ICC proposes to amend the definition of ''Client-Related Initial Margin'' so that it now includes Physical Settlement Margin collected with respect to Client-Related Positions. As discussed below, according to ICC, such Physical Settlement Margin is intended to secure the obligations of a Participant to ICC in connection with physical settlement. Similarly, in Rule 403, ICC proposes to amend the definition of ''Physical Settlement Margin'' to refer to such obligations to ICC (as opposed to the obligations to the matched Participant under the current ICC Rules). In Rule 502(b), a conforming reference to Physical Settlement Margin will be updated. A conforming change is also made in Rule 2101–02(a)(iv).

ICC proposes changes to Chapter 22 (which covers physical settlement) by adding a new Rule 2200 with definitions relating to the revised physical settlement provisions, including ''Matched Delivery Buyer'' and ''Matched Delivery Seller,'' and the related terms ''Matched Delivery Contract,'' ''Matched Delivery Buyer Contract,'' ''Matched Delivery Seller Contract'' and ''MP Delivery Amount.'' As discussed below, these terms are used in connection with the matching of buying Participants and selling Participants in the revised settlement procedures. A new definition of ''Asset Package Delivery Notice'' has also been added to address notices in connection with Asset Package delivery under the 2014 ISDA Credit Derivatives Definitions (the ''2014 ISDA Definitions'').

According to ICC, Rule 2201(a), which provides for matching of buying Participants and selling Participants into a Matched Delivery Pair in the case of physical settlement, will be revised to address scenarios where a Participant's CDS contracts must be split and matched with multiple other Participants for purposes of physical settlement. Conforming changes to use applicable defined terms (such as Relevant Restructuring Credit Event) will also be made. Rule 2201(b), which addresses delivery of certain notices between a Matched Delivery Pair, will be revised to include references to Asset Package Delivery Notices. Rule 2201(c) will be deleted at the request of Participants as being inconsistent with the terms of uncleared CDS and unnecessary in light of the provisions of the ISDA Definitions and Rule 2202.

ICC also proposes changes to Rule 2202, which addresses resolution of disputes related to permissible deliverable obligations, in order to incorporate the concept of Asset Package Delivery under the 2014 ISDA Definitions, as well as related concepts of Prior Deliverable Obligations, Package Observable Bonds and Asset Package Delivery Notices. Rules 2202(b) and (c) will also be revised to address the consequences of a selling Participant's refusal to accept delivery of a particular obligation, including for the offsetting transaction between ICC and the buying Participant.

Rule 2203 will be replaced with new provisions addressing ICC's role in physical settlement. When a Matched Delivery Pair is established, the CDS Contract between the Matched Delivery Buyer and ICC will be referred to as the Matched Delivery Buyer Contract, and the corresponding CDS Contract between ICC and the Matched Delivery Seller will be referred to as the Matched Delivery Seller Contract. Under the revised physical settlement approach, ICC intends to remain party to each such contract, but will require certain notices, payments and deliveries to take place directly between the Matched Delivery Buyer and Matched Delivery Seller. Accordingly, under Rule 2203(a), for each Matched Delivery Buyer Contract, ICC will designate the Matched Delivery Seller to receive on ICC's behalf notices and deliveries from the Matched Delivery Buyer and to make payments on ICC's behalf to the Matched Delivery Buyer. Similarly, under Rule 2203(b), for each Matched Delivery Seller Contract, ICC will designate the Matched Delivery Buyer to deliver on ICC's behalf notices and deliveries to the Matched Delivery Seller, and to receive on ICC's behalf payments from the Matched Delivery Seller. The result is that notices, payments and deliveries will be made directly between the Matched Delivery Buyer and Matched Delivery Seller, in satisfaction of the parties and ICC's respective obligations under both the Matched Delivery Buyer Contract and Matched Delivery Seller Contract. Rule 2203(c) further clarifies that the exercise of rights by Matched Delivery Buyer against ICC will be deemed the exercise by ICC of the corresponding rights against Matched Delivery Seller, and vice versa. Rules 2203(d) and (e) will provide for copies of relevant notices to be provided to ICC, as well as notice of the completion of settlement between the Matched Delivery Buyer and Matched Delivery Seller. Rule 2203(f) will clarify the obligations of the respective parties to a Matched Delivery Contract, and address a scenario where an Asset Package being delivered is deemed to have a value of zero under the 2014 ISDA Definitions. Rule 2203(g) will allocate costs and expenses that may be incurred by ICC in connection with physical settlement.

Rule 2204, as revised, will address physical settlement of certain deliverable obligations that do not settle in the ordinary course on a delivery-versus-payment basis (''Non-DVP Obligations''). The rule establishes a procedure under which the Matched Delivery Seller will pay the physical settlement amount owed to ICC, which in turn will not pay such amount to the Matched Delivery Buyer until ICC receives notice that the obligation has been received by the Matched Delivery Seller from the Matched Delivery Buyer. If the obligation is not delivered, the physical settlement amount will be returned to the Matched Delivery Seller.

ICC states that Rule 2205 will address settlement failures by the Matched Delivery Seller or Matched Delivery Buyer. Under subsection (a), if the Matched Delivery Seller fails to pay the physical settlement amount when due, the Matched Delivery Buyer Contract will be cash settled as between the Matched Delivery Buyer and ICC. ICC thus will not be obligated to take delivery of the relevant deliverable obligations (and dispose of them in a situation where the Matched Delivery Seller has failed to perform), but will compensate the Matched Delivery Buyer for the value of the Matched Delivery Buyer Contract through the cash settlement process. Pursuant to subsection (b), ICC may, in addition to its other default remedies, terminate the Matched Delivery Seller Contract, in which case the Matched Delivery Seller will owe ICC an amount equal to the cash settlement amount ICC paid the Matched Delivery Buyer, together with other losses and expenses incurred by ICC as a result of the failure. Rule 2205(c) provides that, consistent with the terms of the ISDA Definitions applicable to a protection buyer generally, any failure by ICC to deliver any deliverable obligations to the Matched Delivery Seller (including as a result of a failure by the Matched Delivery Buyer to make a delivery) will not constitute a default by ICC, and the Matched Delivery Seller's sole remedy will be as set forth in the Matched Delivery Seller Contract (which may include, for example, buy-in remedies of the Matched Delivery Seller). ICC will not have any obligation to purchase or

acquire deliverable obligations (other than in settlement of the Matched Delivery Buyer Contract) in order to settle the Matched Delivery Seller Contract. In the event of a delivery failure by a Matched Delivery Buyer, such party will be liable to ICC for any costs incurred by ICC in settling the corresponding Matched Delivery Seller Contract (in addition to ICC's other remedies for a default).

According to ICC, the changes to Rule 2206 are to cover certain other, non-default scenarios in which physical settlement fails to occur. Under Rules 2206(a) and (b), if physical settlement of the Matched Buyer Delivery Contract does not occur because the deliverable obligation is in less than the relevant minimum denomination or the Matched Delivery Seller is not a permitted transferee of the obligation, the failure will be treated as an illegality or impossibility outside of the parties' control, which will result in cash settlement [7] under the ISDA Definitions. In this and other scenarios where a cash settlement fallback applies, the same cash settlement amount will apply to both the Matched Delivery Buyer Contract and Matched Delivery Seller Contract under Rule 2206(c). Similarly, in the case of a buy-in, the same buy-in price will apply to both contracts. Rule 2206(d) will provide for cash settlement of both the Matched Delivery Buyer Contract and Matched Delivery Seller Contract in certain cases where delivery does not occur between the Matched Delivery Buyer and the customer for which it is acting. Rule 2206(e) specifies the date of any cash settlement and provides for notice of the relevant amount owed.

According to ICC, Rule 2207(a) will provide for certain standard representations and related provisions for physical settlement in the ISDA Definitions to apply as between the Matched Delivery Buyer and Matched Delivery Seller, and will clarify ICC's authority to designate a Participant to make or receive physical settlement on its behalf as provided in Rules 2203 and 2204 for purposes of Section 9.2(c)(iv) of the 2003 ISDA Credit Derivatives Definitions or Section 11.2(c)(iv) of the 2014 ISDA Definitions, even though the Participant is not its Affiliate. Rule 2207(b) will clarify certain procedures for obtaining price quotations for the relevant deliverable obligations in the event that a cash settlement fallback applies.

Rule 2208 will allow the Matched Delivery Buyer and Matched Delivery Seller to settle their rights and obligations as to physical settlement through an alternative arrangement agreed between them (referred to as a ''CADP''), in lieu of settlement pursuant to Chapter 22 of the ICC Rules. If they so agree, ICC will have no obligation in respect of such alternative arrangement.

Rules 2209(a) and (c) will provide that margin (including physical settlement margin) will continue to be called and held through settlement. Rule 2209(b) will provide that ICC will apply physical settlement margin to satisfy the Matched Delivery Seller's obligation to pay the physical settlement amount, and call such seller for any shortfall.

ICC also proposes to adopt Delivery Procedures that will further specify certain operational and other details for the physical settlement process. According to ICC, Paragraph 1 will provide certain definitions used in the Delivery Procedures. Paragraph 3.2 will set out certain requirements for providing notices in connection with physical settlement. Paragraphs 3.3(a)–(e) will establish the procedures and timetable for ICC to allocate Matched Delivery Pairs and notify Participants accordingly. Paragraph 3.3(g) will address additional procedures concerning delivery of notices by Participants in connection with physical settlement, including as to relevant notice deadlines, requirements for providing copies of notices to ICC, treatment of late notices and procedures for disputes involving notices. Paragraph 4 of the Delivery Procedures will specify certain deadlines in connection with the physical settlement of Non-DVP Obligations under Rule 2204. Finally, Paragraph 5 will specify the deadline for notices that parties have elected a CADP.

ICC also proposes to adopt a set of Physical Settlement and Notices Terms (''Notices Terms'') with respect to physical settlement. The Notices Terms are intended to set forth a uniform set of communications between a Participant and its customer in connection with physical settlement, including delivery of physical settlement notices and delivery and receipt of deliverable obligations as between the Participant and its customer. The Notices Terms will also address the operation of certain cash settlement and other fallbacks as between the Participant and its customer. The Notices Terms do not bind ICC and do not form part of the ICC Rules or ICC Procedures. The Notices Terms are published for the convenience and use of Participants and their customers, and are designed to be incorporated by reference in customer clearing documentation. However, a Participant and its customer may agree to vary the Notices Terms.

ICC also proposes to make certain changes to its Risk Management Framework to accommodate the changes relating to physical settlement that are being made to the ICC Rules and procedures as set forth herein. As revised, the Risk Management Framework reflects ICC's obligations in respect of physical settlement as provided in the amended ICC Rules and procedures. It will set out the steps in the physical settlement process to be taken by ICC if physical settlement applies, including the matching of Participants into Matched Delivery Pairs, consistent with the ICC Rules and procedures. The revisions also address the calculation, collection and use of margin (including physical settlement margin) where physical settlement applies.

III. Comments

The Commission received one comment concerning the proposed rule change. In this comment, the commenter expresses concern that ICC's proposed rule change to guarantee the financial performance of physical settlement, in addition to its existing guarantee of cash settlement, would add additional complexity to ICC's clearing business, particularly during times of financial stress. The commenter addresses three issues with the proposal. First, the commenter suggests that the ''process, financial assets and liabilities, and legal obligations of all parties must be well understood,'' [8] both by ICC and the Commission. Second, ''the SEC should have some periodic report on [ICC's] financial assets, potential obligations or value at risk, and ability to perform under normal or adverse circumstances.'' [9] Finally, the commenter seeks assurance that the SEC would assess the impact ICC's guarantee of ''physical clearing on market participants'' in reducing those participants' ''financial commitment'' or leverage.[10] The commenter did not opine on any particular aspects of the proposed rule change beyond these general statements.

[7] Cash settlement in this context is different from the auction cash settlement that normally applies to CDS contracts under the ISDA Definitions, and is based on price quotations obtained by the relevant party to the contract for the obligation or obligations that cannot be delivered.

[8] Comment from Kermit Kubitz, dated April 17, 2015, *available at https://www.sec.gov/comments/sr-icc-2015-004/icc2015004-1.htm.*

[9] *Id.*

[10] *Id.*

IV. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [11] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [12] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

Rules 17Ad–22(b)(2–3) [13] require each registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly, and maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a central counterparty for security based swaps.

Rule 17Ad–22(d)(15) [14] requires each registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to state to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations.

The Commission finds that the modification of the terms and conditions for physical settlement of cleared CDS Contracts and the adoption of certain new delivery procedures relating to physical settlement is consistent with the requirements of Section 17A of the Act [15] and the regulations thereunder applicable to ICC.

The proposed rule change will provide greater certainty and timeliness with respect to the clearance and settlement of CDS transactions in circumstances where physical settlement applies. Although physical settlement applies only rarely, and as a fallback to the normal procedure for cash settlement, the proposed rule change will prevent Participants from being exposed to the credit risk of other Participants with respect to the financial performance of physical settlement by guaranteeing timely payment of settlement amounts that are due to a non-defaulting party. As a result, the Commission believes the proposed rule change will promote the prompt and accurate clearing and settlement of CDS contracts, and, in general, protect investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Moreover, the proposed rule change will require ICC to collect Physical Settlement Margin [17] (in addition to initial and variation margin) to cover the specific obligations of each Matched Delivery Seller to the clearinghouse with respect to physical settlement. Therefore, the Commission believes ICC will be able to maintain financial resources sufficient to support its clearing operations, including operations under the amended physical settlement procedures, in a manner consistent with the requirements of Rule 17Ad–22(b)(2–3).[18] Furthermore, ICC proposes to amend text of ICC Rules 2203(a)—(g), to address the legal obligations that arise between Participants when settling a CDS Contract that is to be physically settled, with corresponding changes to its Delivery Procedures. The Commission believes that ICC's Rules, as amended, establish ICC's and Participants' obligations for performance (including financial performance) of physically settled contracts, the procedures for settlement and the mechanism for ICC to effect settlement in cash without having to acquire or dispose of the underlying deliverable obligations, consistent with the requirements of Rule 17Ad–22(d)(15).[19]

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [20] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–ICC–2015–004) be, and hereby is, approved.[22]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11595 Filed 5–13–15; 8:45 am]

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[11] 15 U.S.C. 78s(b)(2)(C).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(b)(2–3).

[14] 17 CFR 240.17Ad–22(d)(15).

[15] 15 U.S.C. 78q–1.

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] The Physical Settlement Margin is calculated as the notional value minus the estimated value of the deliverable obligation and collected from the Matched Delivery Seller and held by ICC until such time the Matched Delivery Buyer and the Matched Delivery Seller as a pair confirm that settlement has been occurred. Physical Settlement Margin is not collected from the Matched Delivery Buyer. The estimated value of the deliverable obligation will be determined by ICC using a ''haircut'' approach. ICC will use the price of the cheapest-to-deliver bond as the basis for the ''haircut'' estimation. However, if reliable pricing is not available, ICC reserves the right to determine a price of zero and therefore charge the full notional amount as the Physical Settlement Margin to the seller.

[18] 17 CFR 240.17Ad–22(b)(2–3).

[19] 17 CFR 240.17Ad–22(d)(15).

[20] 15 U.S.C. 78q–1.

[21] 15 U.S.C. 78s(b)(2).

[22] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74915; File No. SR–NASDAQ–2015–054]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter V, Section 6

May 8, 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 May 7, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Regulation of Trading on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

NOM, Section 6, to replace current Section 6 (''Current Rule''), entitled ''Obvious and Catastrophic Errors,'' with new Section 6 (''Proposed Rule''), entitled ''Nullification and Adjustment of Options Transactions including Obvious Errors.'' Section 6 relates to the adjustment and nullification of options transactions that occur on The NASDAQ Options Market (''NOM'').

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant

financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Priority Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' to make clear that this term would not include any broker-dealer or Professional.[3] Although other portions of the Exchange's rules address the capacity of market participants, including customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to adopt a new term, ''Official,'' to apply only to Section 6. Specifically, the term ''Official'' shall mean an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Officials shall be displayed on the Exchange Web site. The Chief Regulatory Officer shall maintain the list of Officials and update the Web site each time a name is added to, or deleted from, the list of Officials. In the event no Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual transactions as follows:

Number of contracts per execution	Adjustment—TP plus/minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds, the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[4] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the

[3] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Chapter I, Section 1(a)(48).

[4] *See* 17 CFR 240.10b–18(a)(5)(ii).

Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[5] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a long enough time for market participants to receive, process and account for and respond to new market information.[6] While introducing this new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

[5] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

[6] *See, e.g.,* Chapter VII, Section 12, which requires certain orders to be exposed for at least one second before they can be executed; *see also* Securities Exchange Act Release No. 66306 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BX–2011–084) (order granting approval of proposed rule change to reduce the duration of the PIP from one second to one hundred milliseconds).

Transactions at the Open

Under the Proposed Rule, for a transaction occurring as part of the opening [7] the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described above. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described above, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 x $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described above. The Exchange believes that it is necessary to determine theoretical price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine theoretical price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify an Official in the manner specified from time to time by the Exchange in a notice distributed to Participants. The Exchange currently requires electronic notification through a web-based application but believes that maintaining flexibility in the Rule is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Exchange Officer may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Exchange Officer the ability to

[7] *See* Chapter VI, Section 8 for a description of the Exchange's opening process.

provide parties relief in those situations where they have failed to report an apparent error within the established notification period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Exchange Officer that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Exchange Officer to act as soon as possible after becoming aware of the transaction; action by the Exchange Officer would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Exchange Officer shall act no later than 8:30 a.m. Eastern Time on the next trading day following the date of the transaction in question.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Exchange Officer's review on his or her own motion may appeal such determination in accordance with paragraph (k), which is described below. The Proposed Rule would make clear that a determination by an Exchange Officer not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Exchange Officer's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Exchange Officer.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical Price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP Minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract, however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any member [sic] submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the

Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one Participant could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[8] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Participant has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by the Official by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify an Official within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify the Official in the manner specified from time to time by the Exchange in a notice distributed to Participants. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic

[8] The Exchange notes that in the third quarter of this year across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[9] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a the Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion equals or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: Sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded

[9] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a Participant has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a Significant Market Event that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Section 6(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other

options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that a trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a Participant is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Regulatory Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Chapter V, Section 3 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to make clear in the Proposed Rule that it will nullify any transaction that occurs during a trading halt in the affected option on the Exchange pursuant to Section 6. If any trades occur notwithstanding a trading halt then the Exchange believes it appropriate to nullify such transactions. While the Exchange may halt options trading for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

The Exchange proposes to adopt Commentary .03 to Section 6 to state that the Exchange will nullify any transaction that occurs: (a) During a trading halt in the affected option on the Exchange; (b) with respect to equity options (including options overlying ETFs), during a trading halt on the primary listing market for the underlying security; or (c) respecting index options, the trade occurred during a trading halt on the primary market in underlying securities representing more than 10 percent of the current index value for stock index options. Currently, the Exchange's rules do not directly address nullification during a trading halt. Accordingly, and for consistency with other exchanges' rules, the Exchange proposes to adopt this provision.

Erroneous Print and Quotes in Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Official in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. The Exchange believes that one second is an appropriate amount of time in which an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify the Official within the timeframes set forth in the Obvious Error provision described above. The Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the

Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying is trading in the $49.00–$50.00 price range then has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based off of this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Official in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average quote width will be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[10] Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify the Official in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each Participant to notify the Exchange if such Participant believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual Participants. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a Participant has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could trigger based off of this new quoted price in the interim. Because the price that triggered such trades was not a valid price it would be appropriate to review said option trades.

Linkage Trades

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Options Order Protection and Locked/Crossed Market Plan [11] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the Participant and The Options Clearing Corporation (''OCC'') of the adjustment or nullification. Thus, the Exchange believes that the proposed provision adds additional transparency to the Proposed Rule.

Appeals

The Exchange proposes to maintain its current appeals process in connection with the Proposed Rule. Specifically, a party to a transaction affected by a decision made under this section may appeal that decision to the Nasdaq Review Council. An appeal must be made in writing, and must be received by the Exchange within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. The Nasdaq Review Council may review any decision appealed, including whether a complaint was timely, whether an Obvious Error or Catastrophic Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price.

In order to maintain a diverse group of participants, the Nasdaq Review Council panel will continue be comprised minimally of representatives of one (1) member engaged in Market Making and two (2) industry representatives not engaged in Market Making. At no time should a review panel have more than 50% members engaged in Market Making. To assure fairness, members of the Nasdaq Review Council, like all members of Board Committees, are subject to a conflict of interest prohibition.[12]

No Adjustments to a Worse Price

Finally, the Exchange proposes to include Commentary .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Limit Up-Limit Down Plan

The Exchange proposes to amend Section 3(d)(iv) to reflect the numbering and content of the Proposed Rule. It will then continue to cover how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility

[10] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See, e.g.,* CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

[11] *See* Chapter XII, Section 1(17).

[12] *See* By-Law Article III, Section 7.

Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan),[13] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[14]

Implementation Date

In order to ensure that other options exchanges are able to adopt rules consistent with this proposal and to coordinate the effectiveness of such harmonized rules, the Exchange proposes to delay the operative date of this proposal to May 8, 2015.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [16] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act [17] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Participants, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutual agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct an erroneous transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with Section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Commentary .02 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with Section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

[13] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[14] 17 CFR 242.600(b)(47).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5).

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, Participants representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any Participant submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by a Participant representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by an Participant that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of

a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Participant has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with Section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to an erroneous print in the underlying security or an erroneous quote in the underlying security is likewise consistent with Section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such

situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process as the Exchange maintains under the Current Rule is consistent with the Act because such process provides Participants with due process in connection with decisions made by Officials under the Proposed Rule. The Exchange believes that this process provides fair representation of members by ensuring diversity amongst the members of any Obvious Error Review Panel, which is consistent with Sections 6(b)(3) and 6(b)(7) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ believes the entire proposal is consistent with Section 6(b)(8) of the Act [18] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[18] 15 U.S.C. 78f(b)(8).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–054 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–NASDAQ–2015–054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–054, and should be submitted on or before June 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11593 Filed 5–13–15; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74920; File No. SR–NYSEMKT–2015–39)

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 975NY—Obvious Errors and Catastrophic Errors in Order To Harmonize Substantial Portions of the Rule With Recently Adopted, and Proposed Rules of Other Options Exchanges

May 8, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 8, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 975NY—Obvious Errors and Catastrophic Errors[4] in order to harmonize substantial portions of the rule with recently adopted, and proposed rules of other options exchanges. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Current Rule 975NY—Obvious Errors and Catastrophic Errors in order to harmonize substantial portions of the rule with recently adopted, and proposed, rules of other options exchanges.[5]

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) Certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For the purposes of this filing, Rule 975NY—Obvious Errors and Catastrophic Errors, in its current format is referred to as ''Current Rule.'' Rule 975NY—Obvious Errors and Catastrophic Errors, with proposed changes is referred to as ''Proposed Rule''.

[5] *See, e.g.,* Securities Exchange Act Release No. 74556 (March 20, 2015), 80 FR 16031 (March 26, 2015) (SR–BATS–2014–067 as amended) (the ''BATS Filing'').

to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches an exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally speaking, public customers—more favorable treatment in some circumstances.

Proposed Rule

The changes proposed in this filing are substantially similar to those recently adopted by BATS Exchange, Inc. (''BATS'') when BATS amended BATS Rule 20.6. The Exchange notes that certain provisions of BATS Rule 20.6, regarding trading halts and nullification by mutual agreement, are covered by Exchange rules other than Current Rule 975NY. The Exchange is not proposing to amend or relocate those rules; however, where appropriate, the Exchange has included a reference to those rules in this filing.[6]

NYSE Amex Options trades options on both an electronic system and via open outcry on the Floor of the Exchange. Unless otherwise noted in this filing, both Current Rule 975NY and Proposed Rule 975NY apply to electronic transactions only.

Title

The Exchange proposes to re-title Rule 975NY from ''Obvious and Catastrophic Errors'' to ''Nullification and Adjustment of Options Transactions including Obvious Errors.'' The new rule title is consistent with the BATS Filing and is in keeping with the efforts of the options exchanges to harmonize rules where ever possible.

Definitions–Proposed Rule 975NY(a)

The Exchange proposes to adopt various new definitions and realign certain existing definitions that will be used in the Proposed Rule, as described below.

• First, the Exchange proposes to adopt a new definition of ''Customer,''[7] for the purposes of the Proposed Rule, to make clear that this term would not include any broker-dealer or Professional Customer.[8] Although other portions of the Exchange's rules address the capacity of market participants, including Customers, the proposed definition is consistent with such rules

[6] *See infra* ''Additional Exchange Provisions.''

[7] *See* Commentary .06 to Rule 975NY (setting forth definition of Customer for purpose of Current Rule).

[8] A ''Professional Customer'' is any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 900.2NY(18A).

and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

• Second, the Exchange proposes to adopt new definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

• Third, the Exchange proposes to adopt a new definition of ''Official,'' which for the purposes of this rule would mean an Officer of the Exchange or a Trading Official, as defined in Rule 900.2NY(82) who is trained in the application of the Proposed Rule. The Exchange notes that utilizing an Exchange Officer or Trading Official when making Obvious and Catastrophic Error determinations is consistent with existing Rule 975NY.

• Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual orders as follows:

Number of contracts per execution	Adjustment theoretical price plus/minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[9] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Theoretical Price—Proposed Rule 975NY(b)

Normal Circumstances

Pursuant to both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the Exchange would use the last NBB and last NBO just prior to the Exchange's receipt of the order as the Theoretical Price for determining the execution price at all price levels.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

Transactions at the Open

Under the Proposed Rule, for a transaction occurring as part of the Opening Auction [10] the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described below. The Exchange believes that this discretion is

[9] *See* 17 CFR 240.10b–18(a)(5)(ii).

[10] *See* Exchange Rule 952NY for a description of the Exchange's Opening Auction.

necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described below. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described below, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 × $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described above. The Exchange believes that it is necessary to determine theoretical price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine theoretical price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Trading Officials currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Trading Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the Current Rule, Trading Officials will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Trading Officials may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of Rule 925NY(b)(4), with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20). The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a long enough time for market participants to receive, process and account for and respond to new market information.[11] While introducing this new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

[11] *See, e.g.,* Exchange Rule 980NY(e)(3) which subjects eligible orders entered into the Electronic Complex Order Auction to be exposed on NYSE Amex Options for a period of time not to exceed one second before they will be executed.

Obvious Errors—Proposed Rule 975NY(c)

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify the Exchange's Trade Desk in the manner specified from time to time by the Exchange in a Trader Update.[12] The Exchange currently only accepts notification via email or phone but believes that maintaining flexibility in the Rule is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Current Rule 975NY(b)(3) authorizes the Exchange's Chief Executive Officer (''CEO'') or designee thereof, who is an officer of the Exchange (collectively ''Exchange officer''), to review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This provision is designed to give the Exchange ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. The Exchange also proposes to relocate substantive provisions of Rule 975NY(b)(3) and incorporate them into proposed Rule 975NY(c)(3). In addition, the Exchange proposes to replace ''Exchange's Chief Executive Officer (''CEO'') or designee thereof, who is an officer of the Exchange (collectively ''Exchange officer'')'' with Official (as defined in Proposed Rule 975NY(a)(3)). Having an Official make the determination to review a trade on his/her own motion is consistent with BATS Rule 20.6(c)(3).

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Official's review on his or her own motion may appeal such determination in accordance with paragraph (k), which is described below. The Proposed Rule would make clear that a determination by an Official not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Official's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Official.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will

[12] Trader Updates are information memos issued by the Exchange and distributed via email to ATP Holders and posted on the Exchange's Web site.

be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer transactions because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract; however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any ATP Holder submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that ATP Holder has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one ATP Holder could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[13] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a ATP Holder has more than 200 transactions under review concurrently.

Catastrophic Errors—Proposed Rule 975NY(d)

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the

[13] *See* Securities Exchange Act Release No. 73884 (December 18, 2014), 79 FR at 77562, n.8 (December 24, 2014) (Notice of Filing of SR–BATS–2014–067 as amended). BATS notes that in third quarter of 2014 across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by the Exchange's Trade Desk by 8:30 a.m. Eastern Time (''ET'') on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Trade Desk within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify the Exchange's Trade Desk in the manner specified from time to time by the Exchange in a Trader Update. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

The Exchange notes that Current Rule 975NY(d) contains special provisions governing Catastrophic Errors involving Binary Return Derivatives, or ''ByRDS.'' [14] ByRDS are a proprietary product traded exclusively on NYSE Amex Options and, as such, were outside of the scope of the industry wide effort to harmonize Obvious and Catastrophic Error rules, and were not addressed in the BATS Filing. The Exchange proposes to incorporate these existing provisions into the Proposed Rule where applicable, as further explained under Additional Provisions, below.

[14] *See* Exchange Rule 900ByRDS.

Significant Market Events—Proposed Rule 975NY(e)

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[15] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded, or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a the Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion equals or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: Sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a market participant has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or exceeded the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is

[15] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a SME that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 975NY(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both

erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Trading Halts—Proposed Rule 975NY(f)

Exchange Rule 953NY Commentary .04 states that trades that occur during a trading halt on the Exchange in the affected option shall be nullified. The Exchange is not proposing to amend Rule 953NY as part of this filing, but does propose to include a reference to Rule 953NY Commentary .04 in Proposed Rule 975NY(f). While a trade that occurs during a halt in an option series is not subject to the same criteria as an Obvious Error, the Exchange believes including such a cross reference with in Rule 975NY is appropriate as it would add clarity to market participants as to what would happen to a trade that occurred during a trading halt.

Erroneous Print in Underlying Security—Proposed Rule 975NY(g)

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to provide market participants a process that allows for the adjustment or nullification of transactions based on an erroneous print in the underlying security.

Current Rules 975NY(a)(4) provides ATP Holders an opportunity for relief in the event an aberrant transaction resulted from an erroneous print in the underlying security. The Current Rule is similar in scope to BATS Rules 20.6(g) and provides ATP Holders a similar opportunity for relief that is afforded to BATS members. The Exchange is proposing to adopt Rule 975NY(g) which is substantially similar to BATS Rule 20.6(g). In addition, the Current Rule contains provisions covering erroneous prints and quotes in related instruments that are not part of the BATS rules. The Exchange proposes to incorporate those provisions into the Proposed Rule, as explained later.

The Exchange proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify the Exchange's Trade Desk within the timeframes set forth in the Obvious Error provision described above. The Exchange further proposes to state that for the purposes of an erroneous print in the underlying security, the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. The Exchange also proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

Current Rule 975NY(a)(4)(A)–(C) contains an additional provision governing erroneous prints in related instruments, which was outside of the scope of the industry-wide harmonization effort and was not included in the BATS Filing. Accordingly, the Exchange proposes to adopt new subsection (g)(1), containing rule text from Current Rules 975NY(a)(4)(A)–(C). Proposed Rule 975NY(g)(1) together with subparagraphs (A)–(B), are virtually identical to the Current Rule and explain in detail the procedures for the nullification or adjustment of an options transaction that resulted from an erroneous print in a related instrument. Retaining current rules governing erroneous prints in related instruments will allow ATP Holders to continue to seek relief in such situations.

As previously mentioned in the filing, unless otherwise noted Proposed Rule 975NY pertains to electronic trading only. Accordingly, the Exchange proposes to not carry over the reference to an ''electronic'' trade (found in the Current Rule) to Proposed Rule 975NY(g), as that concept is covered in earlier rule text.

Erroneous Quote in Underlying Security—Proposed Rule 975NY(h)

In addition to a print in an underlying security, market participants may also price orders submitted to the Exchange based on the quote in the underlying security for the option. Thus, the Exchange believes it is appropriate to provide market participants a process that allows for the adjustment or nullification of transactions based on erroneous quotes in the underlying security.

Current Rule 975NY(a)(5) provides ATP Holders an opportunity for relief in the event an aberrant transaction resulted from an erroneous quote in the underlying security. The Current Rule is similar in scope to BATS Rules 20.6(h) and provides ATP Holders a similar opportunity for relief that is afforded to BATS members. The Exchange is proposing to adopt Rules 975NY(h) which is substantially similar to BATS Rule 20.6(h). In addition, the Current Rules contain provisions covering erroneous quotes in related instruments that are not part of the BATS rules. The Exchange proposes to incorporate those provisions into the Proposed Rule, as explained below.

The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous quote pursuant to the proposed erroneous quote provision it must notify the Exchange's Trade Desk within the timeframes set forth in the Obvious Error provision described above. For the purposes of an erroneous quote in the underlying security, the Exchange proposes to state the allowed notification timeframe commences at the time of the options execution.

Current Rule 975NY(a)(5)(A) contains an additional provision governing erroneous quotes in related instruments, which was outside of the scope of the industry-wide harmonization effort and was not included in the BATS Filing. Accordingly, the Exchange proposes to adopt new subsection (h)(1) containing rule text from Current Rules 975NY(a)(5)(A). Proposed Rule 975NY(h)(1) together with subparagraph (A), are virtually identical to the Current Rule and further explain procedures for the nullification or adjustment of an options transaction that resulted from an erroneous quote in a related instrument. Retaining current rules governing erroneous quotes in related instruments will allow ATP Holders to continue to seek relief in such situations.

Current Rule 975NY(a)(5)(B) describes the procedures for determining the average quote width and states that ''the average quote width shall be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four minute time period referenced above (excluding the quote in question) and dividing by the number

of quotes during such time period (excluding the quote in question).'' These procedures are substantially similar in all material respects to those contained in Proposed Rule 975NY(h).

Stop and Stop-Limit Order Trades Triggered by Erroneous Trades—Proposed Rule 975NY(i)

The Exchange notes that certain market participants and their customers enter Stop Orders [16] or Stop Limit Orders [17] that are triggered based on executions in the marketplace. As proposed, Rule 975NY(i) would provide that transactions resulting from the triggering of a Stop or Stop Limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies the Exchange's Trade Desk in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly triggered because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction pursuant to the Proposed Rule it must notify the Exchange's Trade Desk within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the Stop Order or Stop Limit order.

Linkage Trades—Proposed Rule 975NY(j)

The Exchange also proposes to adopt Rule 975NY(j) that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Options Order Protection and Locked/Crossed Market Plan [18] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange would perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the ATP Holders and the OCC of the adjustment or nullification. Thus, the Exchange believes that the proposed subsection (j) adds additional transparency to the Proposed Rule.

Appeals—Proposed Rule 975NY(k)

Current Exchange rules governing the appeal of an Obvious or Catastrophic Error determination are similar in scope to those in the BATS filing. Specifically, if a party to an Obvious Error determination requests within thirty (30) minutes after the party is given notification of the initial determination being appealed, an Obvious Error Panel (''OE Panel'') will review decisions made by the Exchange, including whether an Obvious Error occurred and whether the correct action was made. In addition, if a party to a Catastrophic Error determination so requests within thirty (30) minutes after being given notification of the determination, a Catastrophic Error Review Panel (''CER Panel'') will review that determination to decide if it was correct, and to decide whether the correct action was taken. An OE Panel or a CER Panel (''Appeal Panel'') may overturn or modify an action taken by the Exchange Official acting pursuant to Rule 975NY. All determinations by an Appeal Panel constitute final action by the Exchange on the matter at issue.

The Exchange proposes to maintain its current appeals process in connection with the Proposed Rule and renumber the existing rule text. As proposed, portions of Current Rule 975NY(c) would be renumbered as Rule 975NY(k)(1) and Current Rules 975NY(d)(3)(D) and (F) would be renumbered as Rule 975NY(k)(2). Also, because the selection criteria and composition of members for both OE Panels and CER Panels are identical, the Exchange proposes to combine existing Rules 975NY(c)(A)–(B) and Rule 975NY(d)(3)(E) into one common provision, Rule 975NY(k)(3). In conjunction with the creation of one common rule, the Exchange proposes to rename the CER Panel as the Catastrophic Error Panel (''CE Panel''). The Exchange believes these changes will make for a concise and more easily navigable rule. The Exchange also proposes to make technical edits to certain rule cites within the relocated provisions to reflect the new numbering convention of the Proposed Rule.

Limit Up-Limit Down Plan—Proposed Commentary .03 to Rule 975NY

The Exchange is proposing to adopt Commentary .03 to the Proposed Rule to provide for how the Exchange would treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan),[19] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[20] Under the Proposed Rule, during a pilot period to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan, an execution would not be subject to review as an Obvious Error or Catastrophic Error pursuant to paragraph (c) or (d) of the Proposed Rule if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the Plan. The Exchange, however, proposes to retain authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of the Proposed Rule and to bust or adjust transactions pursuant to the proposed Significant Market Event provision, the proposed trading halts provision, the proposed provisions with respect to erroneous prints and quotes in the underlying security, or the proposed provision related to stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards would provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices would stand irrespective of subsequent moves in the underlying security.

During a Limit or Straddle State, options prices may deviate substantially from those available immediately prior to or following such States. Thus, determining a Theoretical Price in such situations would often be very subjective, creating unnecessary uncertainty and confusion for investors. Because of this uncertainty, the Exchange is proposing to specify in Commentary .03 that the Exchange would not review transactions as Obvious Errors or Catastrophic Errors when the underlying security is in a Limit or Straddle State.

[16] *See* Exchange Rule 900.3NY(d)(1).

[17] *See* Exchange Rule 900.3NY(d)(2).

[18] *See* Securities Exchange Act Release No. 60527 (August 18, 2009), 74 FR 43178 (August 26, 2009) (approval for SR–NYSEArca–2009–45 as amended).

[19] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (order approving the Plan on a pilot basis).

[20] 17 CFR 242.600(b)(47).

The Exchange notes that there are additional protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers. First, the Exchange rejects all un-priced options orders received by the Exchange (*i.e.,* Market Orders) during a Limit or Straddle State for the underlying security. Second, SEC Rule 15c3–5 requires that, ''financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous.'' [21] Third, the Exchange has price checks applicable to limit orders that reject limit orders that are priced sufficiently far through the national best bid or national best offer (''NBBO'') that it seems likely an error occurred. The rejection of Market Orders, the requirements placed upon broker dealers to adopt controls to prevent the entry of orders that appear to be erroneous, and Exchange functionality that filters out orders that appear to be erroneous, all serve to sharply reduce the incidence of erroneous transactions.

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from ATP Holder and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in the month during which the proposal is approved, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
  - Executed volume, time-weighted quoted bid-ask spread, time- weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
  - high execution price, low execution price;
  - number of trades for which a request for review for error was received during Straddle and Limit States;
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, by May 29, 2015, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan. The Exchange notes that the pilot program is intended to run concurrent with the pilot period of the Plan, which has been extended to October 23, 2015. The Exchange proposes to reflect this date in the Proposed Rule.

No Adjustments to a Worse Price—Proposed Commentary .04 to Rule 975NY

Finally, the Exchange proposes to adopt Commentary .04, (currently Reserved) to Rule 975NY, which would make clear that to the extent the provisions of the Proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Additional Exchange Provisions

As noted above, the proposed changes to Current Rule 975NY are substantially similar to those recently approved as part of the BATS Filing. The Exchange notes that certain provisions of BATS Rule 20.6 are located in Exchange rules other than Rule 975NY. Additionally, Current Rule 975NY contains various provisions that were not part of the BATS Filing but will be maintained by the Exchange and incorporated in the Proposed Rule. A description of each is shown below.

Exchange Rule 966NY [22] provides that a trade on the Exchange may be nullified or adjusted if the parties to the trade agree to the nullification or adjustment. Any adjustment or nullification must be authorized by the Exchange and any adjustment must be to a permissible price and in compliance with any applicable rules of the Exchange or the Securities and Exchange Commission at the time the original transaction was executed. Rule 966NY is similar in scope to the rule text found in the opening paragraph of BATS Rule 20.6 and offers market participants the same opportunity to mutually agree to adjust or nullify a trade as provided by the BATS rule. The Exchange notes that notification procedures and reporting deadlines applicable to the adjustment or nullification of trades based on mutual agreement was not within the scope of the industry-wide harmonization effort. Accordingly, the Exchange does not propose to relocate or amend Rule 966NY.

Rule 975NY(a)(6) permits transactions in series where the NBBO bid is zero to be nullified under certain circumstances, regardless of whether the execution occurred at an erroneous price, pursuant to Obvious Error guidelines (''No-bid Rule''). The Exchange notes that former BATS Rule 20.6(b)(2), which was similar in scope to Rule 975NY(a)(6), was not part of the amended rule set included in the BATS Filing. Thus, the Exchange proposes to delete Rule 975NY(a)(6), to further harmonize trade nullification rules across the options industry.

Current Rule 975NY(a)(7) governs Obvious Errors involving Complex Orders. The process for the handling of for Obvious Errors on Complex Orders was outside of the scope of the industry

[21] *See* Securities and Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791 (November 15, 2010) (File No. S7–03–10).

[22] *See* Securities Exchange Act Release No. 73910 (December 22, 2014), 79 FR 78531 (December 30, 2014) (Notice of filing and immediate effectiveness of SR–NYSEMKT–2014–102).

wide effort to harmonize Obvious and Catastrophic Error rules, and was not addressed in the BATS Filing. The Exchange notes that it will maintain the rule text from Current Rule 975NY(a)(7), in Proposed Rule 975NY(c)(5). To ensure that the Proposed Rule is consistent with other Exchange rules, the Exchange proposes to delete language in paragraph (A) of the rule referencing trades eligible to be adjusted or busted pursuant to paragraph (a)(6)—as this provision would be rendered obsolete by the proposed deletion of the No-bid Rule, as discussed above.

Current Rule 975NY contains various criteria governing Obvious Errors and Catastrophic Errors involving ByRDS.[23] Specifically, Current Rule 975NY(a)(8) addresses Obvious Errors in ByRDS and Current Rules 975NY(d)(1), 975NY(d)(3)(c) and 975NY(d)(3)(c)(i) address Catastrophic Errors in ByRDS. As previously noted, rules governing erroneous execution in ByRDS were outside of the scope of the industry wide harmonization effort. The Exchange intends to maintain its Current Rules and proposes the following technical edits; (i), renumber Rule 975NY(a)(8) as Rule 975NY(c)(6); (ii), incorporate relevant text from Current Rule 975NY(d)(1) into Proposed Rule 975NY(d)(1); (iii), incorporate relevant text from Current Rule 975NY(d)(3)(c) into Proposed Rule 975NY(d)(3); (iv), renumber Rule 975NY(d)(3)(c)(i) as Rule 975NY(d)(3)(A).

Current Rule 975NY(a)(9) states that electronic or open outcry transactions arising out of a ''verifiable disruption or malfunction'' in the use or operation of any Exchange automated quotation, dissemination, execution or communication system may either be nullified or adjusted by Trading Officials. Rules governing verifiable disruptions and system malfunctions were outside of the scope of the industry wide effort to harmonize Obvious and Catastrophic Error rules, and were not addressed in the BATS Filing. Accordingly, the Exchange intends to maintain its Current Rule and proposes the following technical edits; (i) renumber the rule as new Rule 975NY(l); (ii), revise a rule cite within the rule to reflect the new numbering convention of the Proposed Rule; and (iii) replace the term Trading Official with Official.

Current Commentary .01 states that determinations regarding Obvious Errors and Catastrophic Errors made by the Exchange will be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration. The rights to submit a dispute to arbitration under this Commentary is limited to rulings involving Obvious and Catastrophic Errors made pursuant to Current Rule 975NY(b) and (d)(3) and any appeals of such rulings. The Exchange does not propose to expand the applicability of this Commentary to newly proposed provisions of the harmonization effort (*i.e.* Significant Market Events) but does proposes to amend rule cites within this Commentary to reflect the numbering convention of the Proposed Rule.

Implementation Date

The Exchange will announce the effective date of the proposed changes in a Trader Update distributed to all ATP Holders. The effective date will be no sooner than May 8, 2015, the scheduled implementation date of the BATS Filing, which serves as the basis for the Proposed Rule. The Current Rule will remain in force until the Proposed Rule is implemented.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[24] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [25] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act [26] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many ATP Holders, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with Section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Commentary .04 is consistent with the Act as it would

[23] *Supra* n. 14.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f (b)(5).

make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with Section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Trading Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, ATP Holders representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any ATP Holder submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that ATP Holder has 200 or

more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by an ATP Holder representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by an ATP Holder that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event an ATP Holder has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with Section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the

Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to review, nullification and/or adjustment of erroneous transactions during a trading halt (including the proposed cross reference to Rule 953NY Commentary .04), an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to Stop Orders and Stop Limit Orders is likewise consistent with Section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process for Obvious Errors and Catastrophic Errors as the Exchange maintains under the Current Rule is consistent with the Act because such process provides ATP Holders with due process in connection with decisions made by Exchange Officials under the Proposed Rule. The Exchange also believes that the proposed appeals process is appropriate with respect to financial penalties for appeals that result in a decision of the Exchange being upheld, including the proposed new fee for an unsuccessful appeal of a Catastrophic Error determination, because it discourages frivolous appeals, thereby reducing the possibility of overusing Exchange resources that can instead be focused on other, more productive activities. The Exchange believes that the appeal process and the selection of panelists to sit on a panel provides fair representation of ATP Holders by ensuring diversity amongst the members of any Obvious Error Review or Catastrophic Error Panel, which is consistent with Sections 6(b)(3) and 6(b)(7) of the Act.

With regard to the portion of the Exchange's proposal related to the applicability of the Obvious Error Rule when the underlying security is in a Limit or Straddle State, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act because it will provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Further, the Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude from Rule 975NY those transactions executed during a Limit or Straddle State.

The Exchange believes the application of the Proposed Rule without the proposed provision would be impracticable given the lack of reliable NBBO in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Proposed Rule change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system.

Moreover, given the fact that options prices during brief Limit or Straddle States may deviate substantially from those available shortly following the Limit or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit or Straddle States. In this respect, the Exchange notes that only those orders with a limit price will be executed during a Limit or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

The Exchange notes that under certain limited circumstances the Proposed Rule will permit the Exchange to review transactions in options that overlay a security that is in a Limit or Straddle State. Specifically, an Official will have authority to review a transaction on his or her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will have the authority to adjust or nullify transactions in the event of a Significant Market Event, a trading halt in the affected option, an erroneous print or quote in the underlying security, or with respect to stop and stop limit orders that have been triggered based on erroneous trades. The Exchange believes that the

safeguards described above will protect market participants and will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review those transactions that occur during a Limit or Straddle State would allow the Exchange to account for unforeseen circumstances that result in Obvious or Catastrophic Errors for which a nullification or adjustment may be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Similarly, the ability to nullify or adjust transactions that occur during a Significant Market Event or trading halt, erroneous print or quote in the underlying security, or erroneous trade in the option (*i.e.,* Stop and Stop Limit Orders) may also be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will administer this provision in a manner that is consistent with the principles of the Act and will create and maintain records relating to the use of the authority to act on its own motion during a Limit or Straddle State or any adjustments or trade breaks based on other proposed provisions under the Rule.

Finally, the Exchange believes that eliminating Rule 975NY(a)(6) is consistent with the Act because it would encourage internal consistency in Exchange rules and would further industry-wide harmonization of obvious error rules, which, in turn, aids in providing consistent results for market participants across U.S. options exchanges when seeking relief from erroneously priced transactions.

Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Amex Options believes the entire proposal is consistent with Section 6(b)(8) of the Act [27] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [28] and Rule 19b–4(f)(6) thereunder.[29]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[30]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[27] 15 U.S.C. 78f(b)(8).

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[30] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–39, and should be submitted on or before June 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11604 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74908; File No. SR–FICC–2015–001]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Rules of the Government Securities Division and the Mortgage-Backed Securities Division Regarding the Default of Fixed Income Clearing Corporation

May 8, 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 April 24, 2015, The Fixed Income Clearing Corporation (''FICC'') 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 FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(1)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is a clarification of the meaning of clause (b)(i) of Rule 22B of the Government Securities Division (''GSD'') of Fixed Income Clearing Corporation (''FICC'' or the ''Corporation'') and the meaning of clause (b)(i) of Rule 17A of the Mortgage-Backed Securities Division (''MBSD'') of FICC (together the ''Corporation Default Rules''). This clarification does not require a change to the text of the rules of GSD (the ''GSD Rules'') or the text of the rules of MBSD (the ''MBSD Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

It has come to the attention of FICC that, although the texts of the Corporation Default Rules are clear, the narrative description of the rule changes to the Corporation Default Rules recently implemented by FICC in its rule filing SR–FICC–2014–09[5] could be construed as ambiguous as to the relationship between the 7 calendar day grace period applicable under clause (b)(i) of the Corporation Default Rules and FICC's authority to suspend its rules under GSD Rule 42 (Suspension of Rules) and MBSD Rule 33 (Suspension of Rules in Emergency Circumstances), as applicable. By this proposed rule change, FICC is clarifying that the 7 calendar day grace period applicable under clause (b)(i) of GSD Rule 22B cannot be extended by application of any GSD Rule, including GSD Rule 42 (Suspension of Rules), and that the 7 calendar day grace period applicable under clause (b)(i) of MBSD Rule 17A cannot be extended by application of any MBSD Rule, including MBSD Rule 33 (Suspension of Rules in Emergency Circumstances).

(2) Statutory Basis

The proposed rule change is consistent with Section 17A(b)(3)(F)[6] of the Act and the rules and regulations promulgated thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions in that it will provide clarity to FICC members regarding their rights and obligations and the rights and obligations of the Corporation under clause (b)(i) of the Corporation Default Rules.

[31] 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).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 73682 (November 25, 2014), 79 FR 71481 (December 2, 2014) (File No. SR–FICC–2014–09).

[6] 15 U.S.C. 78q–1(b)(3)(F).

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition because it relates to a clarification of the meaning of the Corporation Default Rules that would apply equally to all FICC members.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b–4 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.

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–FICC–2015–001 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–FICC–2015–001. 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 of submission. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/legal/sec-rule-filings.aspx*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FICC–2015–001 and should be submitted on or before June 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11590 Filed 5–13–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Environmental Assessment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Draft Environmental Assessment (DEA) for a Proposed Airport Traffic Control Tower and Associated Base Building, Peoria International Airport, Peoria, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) proposes to fund, construct, and operate a new Airport Traffic Control Tower (ATCT) and Base Building at the General Wayne A. Downing—Peoria International Airport (PIA), Peoria, Illinois. The FAA's preferred alternative is to construct the ATCT at a location approximately 1,000 feet east of the PIA terminal building.

The purpose of the proposed project is to improve operational efficiency, meet existing and future operational and administrative expansion requirements, and accommodate state-of-the-art equipment upgrades. The need for the project is to provide a replacement ATCT, as the existing ATCT was constructed as part of the original terminal building, which is planned to be demolished. A new ATCT and Base Building at PIA would be able to meet these needs. The FAA has prepared a Draft Environmental Assessment (DEA) in conformance with the requirements of the National Environmental Policy Act of 1969 (NEPA) and FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures.* The DEA analyzes the potential environmental impacts that may result from construction and operation of the proposed new ATCT and Base Building at the proposed site, as well as the no action alternative (*i.e.,* not constructing and operating the new ATCT).

DATES: The FAA will accept written comments on the DEA until close of business on June 29, 2015.

ADDRESSES: The DEA is available for public review during a 30–day public comment period at the following locations:

Alpha Park Public Library, 3527 Airport Road, Bartonville, IL 61607.

Peoria International Airport—Metropolitan Airport Authority of Peoria, 6100 W. Everett McKinley Dirksen Parkway, Peoria, IL 61607.

Written comments on the DEA may be sent to: Ms. Virginia Marcks, FAA, AJW–2C15H, 2300 East Devon Ave., Des Plaines, IL 60018, fax 847–294–7698, email *virginia.marcks@faa.gov.* Copies of the Draft EA on compact disk may be obtained by contacting Ms. Virginia Marcks. Comments received on the DEA during the public comment period will be addressed in the Final Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: 847–294–7494. Email: *virginia.marcks@faa.gov.*

Issued in Des Plaines, Illinois, May 8, 2015.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Federal Aviation Administration, Chicago, AJW–2C15H Central Service Area.

[FR Doc. 2015–11659 Filed 5–13–15; 8:45 am]

BILLING CODE 4910–13–P

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

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

ACTION: Denial of a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for denying a petition (DP14–003) submitted to NHTSA 49 U.S.C. 30162, 49 CFR part 552, requesting that the agency open ''an investigation into low-speed surging in the 2006–2010 Toyota Corolla [vehicles] with ETCS-i, in which the brakes fail to stop the vehicle in time to prevent a crash.''

FOR FURTHER INFORMATION CONTACT: Mr. Stephen McHenry, Vehicle Control Division, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone 202–366–4883. Email *stephen.mchenry@dot.gov.*

SUPPLEMENTARY INFORMATION:

1.0 Introduction

Interested persons may petition NHTSA requesting that the agency initiate an investigation to determine whether a motor vehicle or item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 U.S.C. 30162(a)(2); 49 CFR 552.1. Upon receipt of a properly filed petition the agency conducts a technical review of the petition, material submitted with the petition, and any additional information. 49 U.S.C. 30162(c); 49 CFR 552.6. After considering the technical review and taking into account appropriate factors, which may include, among others, allocation of agency resources, agency priorities, and the likelihood of success in litigation that might arise from a determination of a noncompliance or a defect related to motor vehicle safety, the agency will grant or deny the petition. 49 U.S.C. 30162(d); 49 CFR 552.8.

2.0 Petition Background Information

In a letter dated September 11, 2014, Mr. Robert Ruginis requested that NHTSA open ''an investigation into low-speed surging in the 2006–2010 Toyota Corolla [vehicles] with ETCS-i, in which the brakes fail to stop the vehicle in time to prevent a crash.'' Mr. Ruginis based his request upon multiple low-speed ''surge events'' allegedly experienced by his wife in their model year (MY) 2010 Toyota Corolla, the latest of which resulting in a crash into a parked vehicle on June 8, 2014. Mr. Ruginis makes the following claims in support of his petition: (1) The Event Data Recorder (EDR) readout of his wife's crash supports her account of vehicle acceleration after she applied the brake; (2) NHTSA has never investigated surges in low-speed crashes in Toyota vehicles; (3) a software expert has identified vulnerabilities in Toyota's ETCS-i source code; (4) there are other similar incidents of ''surge at low speed or no speed'' in Toyota Corolla vehicles in NHTSA's consumer complaint database; and (5) surges in low-speed parking scenarios are a safety problem.

NHTSA has reviewed the material cited by the petitioner. The results of this review and our analysis of the petition's merits are set forth in the DP14–003 Petition Analysis Report, published in its entirety as an appendix to this notice.

For the reasons presented in the petition analysis report after a thorough assessment of the potential risks to safety, it is unlikely that an order concerning the notification and remedy of a safety-related defect would be issued as a result of granting Mr. Ruginis's petition. After full consideration of the potential for finding a safety related defect in the vehicle and in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's mission, the petition is respectfully denied.

Appendix—Petition Analysis—DP14–003

1.0 Introduction

On September 12, 2014, the National Highway Traffic Safety Administration (NHTSA) received a September 11, 2014, letter from Mr. Robert Ruginis petitioning the agency ''for an investigation into low-speed surging in the 2006–2010 Toyota Corolla [vehicles] with ETCS-i, in which the brakes fail to stop the vehicle in time to prevent a crash.'' The letter provides the following basis for the request:

This request is based on first-hand experience in which multiple low-speed surge events that occurred while driving our 2010 Corolla. The latest incident resulted in a crash on June 8, 2014. In addition to the evidence from our crash incident, we are providing evidence that many other Corolla owners are experiencing similarly unsafe scenarios that are leading to crashes.

The petition letter provides information regarding the June 8, 2014, crash incident, including the petitioner's interpretation of pre-crash data downloaded from the vehicle Event Data Recorder (EDR) by Toyota field inspectors:

The EDR investigation report clearly showed that at the moment the airbag module made the decision whether to deploy (about the time of impact), the voltage to the accelerator pedal was .78 (at idle), the brake was engaged, yet both the speed of the vehicle and engine RPM's had doubled in less than 2 seconds.

Mr. Ruginis provided copies of the police report for the accident, the EDR report, and a list of ODI complaints (VOQs) that he considered similar to his wife's experience in the crash and in prior driving experience. He provided the following five reasons supporting an ODI investigation of the alleged defect in the MY 2006 through 2010 Toyota Corolla vehicles:

1. The EDR results suggest that unsafe and unexpected surges can occur even when the driver's action is to apply the brake;
2. NHTSA has never investigated surges in low-speed crashes in Toyotas;
3. The observations of software expert Michael Barr suggest that Toyota's electronic architecture has many vulnerabilities;
4. Unintended surges in low-speed parking scenarios are common; and
5. Surges in low-speed parking scenarios are a safety problem.

In evaluating the petitioner's allegations and preparing a response, ODI:

- Reviewed the petition request and submitted appendices, interviewed the petitioner and his wife—who was the primary driver and who was driving when the crash occurred.
- Provided the 163 VOQs submitted by the petitioner to Toyota, formally requested Toyota to provide full warranty claim histories for throttle and braking systems on the subject vehicles, as well as copies of all reports made to Toyota by the complainants or by dealership or Toyota technical personnel related to the complaints, field inspection data, and all related EDR download data obtained by Toyota collected from vehicles identified in incidents reported in the subject vehicle VOQs.
- Requested technical and engineering information from Toyota related to the alleged defect as submitted by the petitioner.
- Analyzed the information provided by Toyota in response to our specific requests for information.
- Reviewed previous analysis and investigative work into unintended acceleration done by NHTSA, the National Aeronautics and Space

Administration, and the National Academy of Sciences as well as papers from the Society of Automotive Engineers related to EDR download data interpretation and limitations.

- Interviewed complainants who had submitted the 163 VOQs noted by the petitioner. Gathered, when possible, law enforcement crash reports, insurance reports, repair facility invoices, photographs of crash sites, security camera surveillance video, and any other relevant information related to the reported incidents.
- Acquired the petitioner's vehicle and transported it to the Vehicle Research Test Center (VRTC) in East Liberty, Ohio, for evaluation.

2.0 Background

2.1 Definitions

The term ''unintended acceleration'' (UA) is often used to generally describe any unintended speed increase in a motor vehicle. This is an extremely broad definition that includes some aspects of normal vehicle performance (*e.g.,* idle speed control and transmission control), as well as many forms of abnormal performance of those systems that represent little to no hazards to highway safety (*i.e.,* issues generally described as ''driveability'' issues).[1] Within the universe of unintended acceleration issues that do involve potentially serious safety hazards, ''sudden acceleration'' (SA) incidents are the most common and are defined as allegations of ''unintended, unexpected, high-power acceleration from a stationary position or a very low initial speed accompanied by an apparent loss of braking effectiveness.'' [2] This definition was developed in the 1980's, when ODI first began investigating the subject in a large cross-section of passenger car makes and models sold in the U.S., including Audi 5000 sedans.

The foregoing definition purposefully excludes ''stuck throttle'' type incident symptoms, which involve failure of the throttle to return to idle when the accelerator pedal is released by the driver. Stuck throttle defects generally follow patterns including relatively high initiation speeds, large accelerator pedal applications and other driving conditions specific to each defect condition. For example, floor mat entrapments tend to occur after the driver has intentionally pressed the accelerator pedal to the floor to pass vehicles on the highway, merge with highway traffic or accelerate up hills. Unintended accelerations resulting from pedal entrapment involve maximum engine power and often include degraded brake effectiveness if the driver pumps out the reserve vacuum in the brake booster, resulting in loss of power assist to the brakes. If the driver is unable to bring the vehicle to a complete stop within the first couple of miles, the brakes will continue to lose effectiveness due to brake fade or heat degradation of the friction materials.

2.2 Sudden Acceleration Background

ODI's first investigation of sudden acceleration, EA78–110, opened almost 40 years ago, covered approximately 60 million MY 1973 through 1986 General Motors passenger cars. That investigation established that sustained, unintended, ''high-power acceleration'' could only be caused by failure mechanisms that produced large throttle openings. This finding reduced the potential failure modes to defects affecting throttle linkages and cruise control components. Ninety percent of the accident vehicles in EA78–110 were not equipped with cruise control, thus eliminating the only potential electronic mechanism capable of opening the throttle in that investigation.[3] The investigation was closed in 1986 after eight years of testing and studies, concluding that:

Inadvertent and unknowing driver application of the accelerator pedal when the driver intended to apply the brake [''pedal misapplication''] *appears to be the cause of many of the reported sudden acceleration related accidents, even though many of the drivers continue to believe that they had been pushing on the brake pedal.*[4]

In October 1987, a little over a year after EA78–110 was closed; NHTSA's Administrator ordered an independent review of SA (the ''Study''). While the phenomena affected all automatic transmission-equipped cars sold in the U.S., some had notably higher occurrence rates, raising questions about vehicle design factors that may be contributing to the problem. The Study re-examined potential causes of SA, as well as design factors that may contribute to higher rates of pedal misapplication. The results of the Study were released in March 1989, in a report titled ''*An Examination of Sudden Acceleration.*'' [5] With respect to the cause of SA incidents, the Study concluded that, absent evidence of a throttle, cruise control or brake malfunction, ''the inescapable conclusion is that these definitely involve the driver inadvertently pressing the accelerator instead of, or in addition to, the brake pedal.''

Because the majority of incidents were associated with accelerations that began after the vehicle was started and shifted from Park to Drive or Reverse gear, the most effective countermeasure for pedal error related SA incidents was the incorporation of brake-shift interlocks to prevent shifting from Park when the brake pedal is not depressed. Shift interlocks were voluntarily implemented by most manufacturers in the late-1980's and early-1990's and early studies showed reductions in the number of SA complaints during this time period, with the trend driven by the drop in events occurring immediately after shift from Park.[6] Brake shift interlocks have no effect on mitigating pedal errors later in the drive cycle (*e.g.,* parking).

2.3 Toyota Investigations and NHTSA/NASA Study

From 2003 through 2009, ODI examined unintended acceleration issues in Toyota vehicles equipped with ETCS-i in 3 defect investigations and 5 defect petition evaluations. These activities prompted 4 safety recalls addressing floor mat entrapment, a ''sticky pedal'' condition, and an accelerator pedal interference condition. Publicity surrounding a fatal crash in August 2009, that was determined to have been caused by floor mat entrapment, the ensuing floor mat recall by Toyota and the ''sticky pedal'' recall led to intense media coverage of Toyota unintended acceleration issues and possible electronic defects.

Much of the interest focused on low-speed SA incidents in Toyotas not included in the floor mat recalls or in recalled vehicles that had clearly not

[1] ODI's analysis of warranty data for MY 2002–2010 Toyota Camry vehicles submitted by Toyota as part of RQ10–003, determined that approximately 80 percent of the claims were related to engine or transmission recalibrations to address a number of vehicle driveability concerns (*e.g.,* improving shift feel) as described in a series of technical service bulletins, each related to separate conditions and vehicle subpopulations. Claim rates were negligible (less than 0.03%) in vehicles with no such TSB's (*e.g.,* MY 2002–2006 Camry L4 with 2AZ–FE engines).

[2] The definition has been broadened in recent years to include incidents occurring in certain on-road driving maneuvers that require braking, such as approaching controlled intersections or highway exit ramps, but the majority of incidents continue to be reported in low-speed parking maneuvers.

[3] Reinhart, W. 1996. *Engineering Analysis Closing Report, EA78–110.* Washington, DC: NHTSA, (11).

[4] Reinhart, W. 1996. *Engineering Analysis Closing Report, EA78–110.* Washington, DC: NHTSA, (18).

[5] Pollard, J., and E.D. Sussman. 1989. *An Examination of Sudden Acceleration.* Report DOT–HS–807–367. Transportation Systems Center, U.S. Department of Transportation.

[6] Reinhart, W. 1994. The Effect of Countermeasures to Reduce the Incidence of Unintended Acceleration Accidents. Paper 94 S5 O 07. *Proc., 14th International Technical Conference on Enhanced Safety of Vehicles,* Washington, DC, Vol. 1, (821–845).

experienced either mat entrapment or ''sticking accelerator pedals.'' NHTSA responded by conducting an in-depth examination of Toyota's electronic throttle control systems in partnership with NASA's Engineering and Safety Center. NHTSA and NASA released reports detailing the results of this study in early 2011, concluding that incidents alleging low-speed surges during brake application were most likely related to driver pedal misapplication and were not associated with an electronic or software defect in Toyota's ETCS-i system.

2.4 National Research Council Special Report 308

In 2012, the National Academy of Sciences released a report that included a review of NHTSA's defects investigations of low-speed surging in Toyota vehicles and the results of the joint study with NASA. The report, titled ''*The Safety Promise and Challenge of Automotive Electronics, Insights from Unintended Acceleration,''* concluded that NHTSA's decision to close its investigations of Toyota's ETC were justified based on the initial investigations, complaint analyses, field investigations using EDR data and NASA's examination of the Toyota ETC. With regard to allegations of low-speed surging with ineffective brakes, the report stated:

Reports of braking ineffectiveness in controlling a vehicle experiencing the onset of unintended acceleration from a stopped position or when moving slowly require an explanation for the ineffectiveness, such as physical evidence of damage to the brake system. Under these circumstances, investigating for phenomena other than pedal misapplication absent an explanation for the ineffectiveness of the brakes, which are independent of the throttle control system and are designed to dominate engine torque, is not likely to be useful.[7]

3.0 Petition Analysis

Pre-Crash Data, -5 to 0 seconds (Most Recent Frontal/Rear Event, TRG 1)

Time (sec)	-4.8	-3.8	-2.8	-1.8	-0.8	0 (TRG)
Vehicle Speed (MPH [km/h])	3.7 [6]	3.7 [6]	3.7 [6]	3.7 [6]	5 [8]	7.5 [12]
Brake Switch	OFF	OFF	OFF	OFF	OFF	ON
Accelerator Rate (V)	0.78	0.78	0.86	0.78	0.78	0.78
Engine RPM (RPM)	800	800	800	800	800	1,600
Pre-Crash Data Status *	Valid	Valid	Valid	Valid	Valid	Valid

* "Invalid" may be set for M/T vehicle

3.1 Petitioner's Vehicle

3.1.1 Petitioner's Accident

The petition was prompted by a collision with a parked vehicle during an attempted curbside parking maneuver in a residential neighborhood on June 8, 2014. In the police report, the driver states that she stopped at an intersection with the intention of turning right and parking along the curb behind a parked vehicle.

Figure 1. Pre-Crash Data for Petitioner's Accident (Image From Bosch CDR Report)

During a subsequent vehicle inspection on June 24, 2014, Toyota downloaded data from the vehicle EDR (Figure 1).

3.1.2 EDR Data Analysis

Although the EDR data shown in Figure 1 appears to show that engine speed doubled on or about the same time that the brake switch shows brake pedal application, examination of this data as well as the ways in which the EDR collects, transmits and records it, does not support the petitioner's conclusion that the vehicle accelerated when the brake was applied. Interpretation of EDR pre-crash data should be done within the context of the incident reconstruction, including a detailed statement from the driver, and must take into account the limitations of the system as documented on the Bosch Crash Data Retrieval (CDR) report. The limitations include the resolution of each data element, the asynchronous refresh rates of the data elements, and the rate at which the EDR samples and records the data. Toyota provided the following EDR design information for the 2010 Corolla in response to a formal request by ODI:

The Vehicle Speed is based on the front wheel speed sensors and recorded in 2 kph increments and nominally updated every 500 ms. The Brake Switch, based on the stop lamp switch status, is either ON or OFF, and is updated instantly. The service brake pedal must be depressed minimally for the stop lamp to activate. The accelerator pedal position is recorded in 0.039 volt increments, and the value is nominally updated every 524 ms. This measurement is taken directly at the operator's accelerator pedal. The Engine RPM is measured in 400 RPM increments and is nominally updated every 524 ms.[8]

ODI interviewed the driver to obtain her description of the incident. She indicated that her normal braking style when parking is to apply light, gradual pressure to the brake pedal, rather than a sudden, hard stop. She indicated that as she applied the brakes during the incident, the car responded by accelerating. She stated that it did not slow down, and it continued to increase in speed until it hit the back of the parked vehicle. The petitioner provided a similar description in a call to Toyota's customer relations department three days after the incident, alleging simultaneous failures of both the engine/accelerator and brakes that resulted in full throttle acceleration into a parked vehicle.

The EDR data for the petitioner's incident shows no recorded service brake application until the airbag module trigger point (t = 0s).[9] This indicates that the brake switch was ON immediately after impact, but does not indicate the degree or duration of brake application. The fact that the EDR showed a nominal 3.8 mph increase in vehicle speed in the last 1.8 seconds of recording, and subsequent vehicle testing found the brakes to be fully functional, indicates that no meaningful braking occurred prior to impact. Based on the vehicle speeds recorded just prior to impact ($t = -0.8$ s), the Corolla was less than a car length from the parked vehicle and traveling 7 to 9 feet per second with no indication of service brake application. Based on the vehicle

[7] NRC. 2011. *TRB Special Report 308: The Safety Challenge and Promise of Automotive Electronics: Insights from Unintended Acceleration.* Washington, DC: National Academies Press, (164).

[8] As indicated in the Bosch CDR report, the Vehicle Speed and Engine RPM values are both rounded down in the given increments.

[9] Airbag deployment software is triggered within 1ms of the airbag module sensing a longitudinal deceleration of about 2 g's (''algorithm enable''). The time interval between impact and airbag algorithm enable is very short, with the precise time depending upon specific crash dynamics.

speed and the driver's stated braking habits, initiation of braking would be expected when the vehicle is about a full car length or more from the intended stopping point. Based upon all of these factors, ODI does not believe that the brake switch data recorded by the EDR is consistent with the petitioner's statement that the vehicle accelerated with the brake applied and vehicle testing demonstrated that acceleration would not occur if the brake pedal had been applied with any meaningful force.

In addition, although the EDR does not show any increase in accelerator pedal voltage in the final 2.8 seconds prior to impact, this does not mean that the accelerator pedal was not depressed during that time period. According to Toyota, *''The increase in the vehicle speed and engine speed prior to impact is consistent with an accelerator pedal being depressed between the recorded data points but not recorded by the EDR.''* VRTC testing confirmed that a short and rapid application of the accelerator could: (1) Fail to be recorded by the EDR based on the asynchronous update rates of the CAN bus signals and the relatively slow sampling rate used by the EDR; and (2) produce the engine and vehicle speed changes recorded by the EDR at t = 0.0 s.

3.1.3 VRTC Vehicle Evaluation/Testing

Following detailed instructions provided by the petitioner regarding the conditions of the surging during the parking maneuvers, VRTC performed over 2,000 miles of test driving while evaluating the petitioner's accident and the vehicle itself. The testing did not produce any unusual performance of the throttle or transmission systems. In addition, testing of the incident vehicle brake system found that it functioned normally and could hold the vehicle stationary with the engine at 2,000 RPM with less than 15 lb of pedal pressure applied to the brakes. The brakes could also hold the vehicle stationary at full throttle with less than 20 lb of force applied to the brake pedal. Testing also showed the vehicle's brakes could bring it to a full stop in less than three feet at the speeds provided in the petitioner's account of the crash.

The petitioner also alleged that uncommanded, short-duration throttle surges occurred in the Corolla during certain decelerations from highway speed. VRTC also conducted testing to try to reproduce this phenomenon but did not observe any unusual performance or symptoms associated with harsh downshifting or changes in torque converter clutch status. Drivers that use light braking during coasting decelerations are likely to be more sensitive to certain transmission shift transients that are triggered by brake application (*e.g.,* torque converter unlock), that may not be noticed by drivers who use more brake pedal force. However, such transients have very brief durations, involve minor changes in vehicle deceleration and are normal operating characteristics of automatic transmission vehicles that do not represent an unreasonable risk to motor vehicle safety. Furthermore, ODI does not consider the coast down condition reported by the petitioner to be related to the surging alleged in the accident, which did not involve transmission shifting.

3.2 NHTSA Investigations of Low-Speed Surges

The petitioner claims that NHTSA has never investigated low-speed surges in Toyota vehicles. This is incorrect. NHTSA has investigated complaints alleging low-speed surges in Toyota vehicles equipped with ETCS-i for over 10 years, starting with a defect petition (DP03–003) in 2003. Altogether, ODI completed 5 defect petition evaluations and 1 investigation (PE04–021) related to allegations of low-speed surging in Toyota vehicles equipped with ETCS-i prior to the joint study of the issue initiated by NHTSA and NASA in 2010.[10]

Low-speed surges were the primary focus of the study by NHTSA and NASA in 2010. As clearly stated in the Executive Summary of NHTSA's February 2011 report from this study:

Both [NHTSA and NASA] also noted that the vast majority of complaints involved incidents that originated when the vehicle was stationary or at very low speeds and contained allegations of very wide throttle openings, often with allegations that brakes were not effective. NHTSA's analysis indicated that these types of complaints generally do not appear to involve vehicle-based causes and that, where the complaint included allegations that the brakes were not effective or that the incident began with a brake application, the most likely cause of the acceleration was actually pedal misapplication (i.e., the driver's unintended application of the accelerator rather than, or in addition to, the brake.)

The results of NHTSA's field inspections of vehicles involved in alleged UA incidents during 2010 supported this analysis. Those vehicle inspections, which included objective evidence from event data recorders, indicated that drivers were applying the accelerator and not applying the brake (or not applying it until the last second or so).'' [11]

A review of the NHTSA and NASA reports from the Toyota ETCS-i study show that the petitioner's incident and the other similar incidents presented by the petitioner fall within the scope of the prior work, which concluded that allegations of sudden acceleration from a stop or low-speed with ineffective brakes are most likely caused by pedal error by the driver and not indicative of a vehicle-based defect (unless potential faults are identified in pedal design or in shift-interlock safeguards—for incidents occurring after a shift from Park).

3.3 Software Theories

The petition states that ''the observations of software expert Michael Barr suggest that Toyota's electronic architecture has many vulnerabilities'' and concludes that these observations suggest that ''floor mats and sticky accelerator pedals are not the only causes of unintended low-speed surges in Toyota vehicles.''

Before responding to the petitioner's statement regarding recent software theories, ODI first notes that floor mats and sticky pedals have never been considered likely ''causes of unintended low-speed surges in Toyota vehicles.'' Incidents of pedal entrapment by improper or out-of-position floor mats are a severe form of a stuck throttle condition, as they occur after the pedal has intentionally been fully depressed to wide-open throttle (WOT) by the driver, generally during attempted passing maneuvers, accelerations on highway entrance ramps to merge with highway traffic or attempts to maintain speed or accelerate up hills. When the driver releases pressure from the accelerator, the pedal remains stuck at WOT resulting in an incident of high-speed unintended acceleration.

The ''sticky pedal'' condition was associated with excessive friction in the accelerator pedal assembly which could develop after the vehicle had been parked overnight in certain environmental conditions (*e.g.,* high relative humidity and cool ambient temperature). A pedal with excessive friction may be slow to return to idle when released by the driver and, in some cases, may stick after being held at a constant position for an extended period of time. This would typically occur during steady-state highway driving (*i.e.,* pedal held at constant position for some period of time)

[10] DP03–003, DP04–003, PE04–021, DP05–002, DP06–003 and DP08–001 all included examination of alleged vehicle accelerations from low-speeds.

[11] NHTSA. 2011. *Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems.* (viii). *http://www.nhtsa.gov/PR/DOT-16-11.*

following a morning cold-start and the pedal could ordinarily be returned to idle simply by tapping the accelerator pedal to free the sticking condition. Although ODI is not aware of any crashes or injuries resulting from sticking pedals, the condition has been mistaken for evidence of electronic UA in at least one instance.[12]

With regard to Mr. Barr, ODI is aware that he and other consultants have raised certain software design and electrical architecture issues in the course of civil litigation regarding Toyota ETCS-i vehicles. The petition does not cite, and ODI is unaware of, any instance where Barr or any other consultant postulating that the ETCS-i software is defective has reproduced unintended acceleration in a Toyota ETCS-i vehicle under real-world driving conditions.

The petitioner submitted a presentation prepared by Barr regarding his analysis of the software in a 2005 Toyota Camry and cites several opinions contained in that document, but does not identify any specific condition or theory that could result in SA in the subject vehicles.[13] The Barr presentation summarizes his review of Toyota's ETCS-i source code and a case review of a defect theory he developed as part of a lawsuit relating to a fatal accident in a 2005 Toyota Camry with a 4-cylinder engine. Barr's defect theory involved the suspension of a specific operating system task that performs multiple throttle control and failsafe functions in the Toyota ETCS-i source code (Task X death). Task X death would result in the throttle remaining stuck at the last computed throttle command, but would be terminated by any transition in brake switch status.[14]

We note that the Corolla vehicles that are the subject of this petition are equipped with engine control modules (ECM's) supplied by Delphi, while Barr's task death theory applies to Toyota Camry vehicles equipped with Denso modules. The Delphi modules contain different source code with different task and stack monitoring functionality than the Denso modules and, hence, do not contain substantially similar software. It is therefore reasonable to conclude that the theories and mechanisms advanced by Mr. Barr in regard to the software employed in the Denso throttle controls are inapplicable to the petitioner's vehicle.

Nonetheless, since the low-speed surge incidents that are the subject of the petition are similar to the SA crash incidents reported in other Toyota vehicles, regardless of throttle control technology or ECM supplier, ODI offers the following assessment of the Barr task death theory submitted by the petitioner:

• *No specific defect identified*—Barr identifies a number of issues with Toyota's ETCS-i software and electrical architecture, including several potential failure mechanisms that he speculates could result in task death.[15] However, as stated in his ''Case Specific Opinions'' slide [54], he ''cannot identify with 100% certainty the specific software defects'' responsible for the UA incident. ODI sees no factual basis for assigning any level of probability to his theories.

• *Not reproduced*—Barr does not identify any specific software states or vehicle operating conditions necessary for any of the failure mechanisms to occur and has not reproduced a task death or any other software failure resulting in SA in real world driving conditions.[16]

• *Untestable*—Rather than identifying the specific conditions necessary for theoretical software failures to occur, Barr and other proponents of the theory have suggested that such failures cannot be reproduced because ''the test space is effectively infinite'' resulting in ''too many possible tests.'' [17] This precludes any scientific evaluation of the validity of such theories.[18]

• *Fault injection did not produce SA*—When Task X deaths were reproduced by fault injection, they did not result in sudden increases in throttle opening or any loss of brake effectiveness. Incidents that begin when the brake is not applied result in loss of power to the throttle when the brake is applied and incidents that begin with the brake already applied would, necessarily, involve low severity because the engine would be frozen at idle.[19] Table 1 describes throttle and brake responses for each of the initial condition pedal state scenarios associated with Task X death. The risk of uncontrolled acceleration, crash or injury would be low and complaints associated with such incidents would be more likely to cite loss of power or stalling than uncontrolled engine power.

TABLE 1—TASK X DEATH SCENARIOS

Initial conditions	Throttle and brake symptoms
Foot on the accelerator pedal	• Throttle stuck at last computed throttle command. • Brake application cuts power to the throttle.
Foot on the brake pedal	• Throttle is initially stuck at idle. • Normal braking (brake release cuts power to the throttle).
Foot on neither pedal	• Throttle is initially stuck at idle.

[12] Testing conducted by Toyota and observed by NHTSA engineers reproduced the sticking pedal condition in the pedal assembly removed from a MY 2007 Toyota Avalon involved in an incident in January 2010 that was reported by some as evidence of electronic UA (VOQ 10300210).

[13] For example, the petitioner cited Barr's opinions that ''Toyota's ETCS source code is of unreasonable quality'' and ''Toyota's source code is defective and contains bugs, including bugs that can cause unintended acceleration.''

[14] Any transition in brake switch status would result in a discrepancy between brake status recognized by the Main CPU, which would be frozen by the task death, and the Sub-CPU which would continue to receive actual brake status voltage from the stop lamp switch (''brake echo check''). This would trigger failsafe operation with throttle opening limited to less than 10 degrees and set a fault code.

[15] For example, Barr speculated that memory corruptions resulting from stack overflow or unidentified software bugs could result in task death and other negative effects.

[16] Barr's only testing of Task X death involved a fault injection method, performed with Toyota's assistance, to artificially induce task deaths to study system and failsafe performance. There is no evidence of any scenario in which the ''brake echo check'' failed to cut power to the throttle after brake switch transition during this testing.

[17] In ODI's investigations of defects involving embedded control system faults, either VRTC, the manufacturer, or the supplier have been able to: (1) Identify the specific operating conditions necessary to produce the fault through field data analysis, system review and testing; and (2) reproduce the conditions to duplicate the faults in vehicle testing.

[18] Theories of electromagnetic interference (EMI) effects on ETC or cruise control systems as causes of SA incidents have included similar claims regarding testability. No EMI theories have ever been duplicated in a vehicle and no specific source or path for the interference has been identified.

[19] With regard to the potential for more severe failure modes associated with Task X death, Barr further speculates that one memory corruption event ''can cause task death and open [the] throttle'' and that the brake echo check may not always cut power to the throttle. He states that ''memory corruptions are like ricocheting bullets'' that may result in more severe effects. However, these theories have never been demonstrated in any testing nor were they observed during fault injection tests conducted to observe system performance with artificially induced task death.

TABLE 1—TASK X DEATH SCENARIOS—Continued

Initial conditions	Throttle and brake symptoms
	• Brake application cuts power to the throttle.

• *No evidence in field data*—The fault injection testing did not reproduce an SA, but it did demonstrate that failures related to Task X death would result in a very specific set of symptoms that can be used to identify potentially relevant incidents in field data, such as: (1) Allegations of unresponsive accelerator pedals that do not increase or decrease engine power when the driver presses or releases the pedal; (2) allegations of vehicles suddenly losing power when the brake is applied; and (3) fault codes associated with ''brake echo check'' failsafe operation. ODI's analyses of complaints and warranty data have not revealed any sign of these symptoms in any Toyota ETCS-i vehicles.

• *Not consistent with reported SA*—Incidents of sudden acceleration also involve very specific symptom patterns, including: (1) Primarily occurring in low-speed driving maneuvers in parking lots and driveways, as well as other driving maneuvers associated with required brake application (see Table 3); (2) reports of sudden increases in engine power allegedly initiated by application of the brake; and (3) the allegations of brake ineffectiveness in the same complaints. None of the software task death theories postulated by Barr fit or otherwise explain these patterns. The same patterns and vehicle dynamics are evident in the large volume of crashes in which pedal misapplication has been identified as the undisputed cause (see section 3.5, *Low-speed surge hazards*). ODI has observed these patterns in SA complaints in investigations and research covering nearly 40 years and involving vehicles with all forms of throttle control, both mechanical and electronic.

• *Brake effectiveness*—None of the electronic theories reviewed by ODI explain how pressing on the ''brake'' would result in a sudden increase in engine power as alleged in SA complaints, nor do they explain why the brakes would suddenly lose effectiveness at the same time as the engine power surge.[20]

• *Different software*—As noted above, the Corolla vehicles at issue in this petition are equipped with ECM's supplied by Delphi, while Barr's task death theory applies to certain Toyota Camry vehicles equipped with Denso modules. The Delphi modules contain different system monitoring functionality than the Denso modules and, hence, do not contain substantially similar software.

• *Pedal error not excluded*—As Barr indicated in a slide titled ''*Other Similar Incident Criteria* [55],'' evidence contradicting correct use of pedals is one factor that would exclude his theories from consideration. As outlined in Section 3.4 of this report, *Other Similar Incidents,* the available EDR data for the subject vehicles does provide evidence contradicting the correct use of pedals.

3.4 Other Similar Incidents

The petitioner states: ''I reviewed the complaints made to NHTSA by owners of 2006–2010 Toyota Corollas [and] found 163 reports in which the driver experienced a surge at low speed or no speed; 99 drivers mentioned that the brakes were already depressed when the surge occurred or the surge occurred when the brakes were depressed; 83 incidents resulted in crashes.'' ODI provided copies of the 163 VOQs noted by the petitioner to Toyota and requested complaint, warranty, inspection and EDR information about each vehicle (''subject vehicles'').

Using information supplied by Toyota, the VOQ text, and any supporting or additional information (*e.g.,* law enforcement crash reports, repair orders from dealers or independent repair facilities, photographs, interviews with complainants and/or complainants' families,[21] witness statements, letters to elected representatives, letters to NHTSA, etc.) ODI analyzed the petitioner's incident and the 163 VOQs reporting similar incidents as alleged by the petitioner. Six of the VOQs are duplicate submissions, resulting in a total of 158 unique vehicles. ODI's analysis of these complaints is summarized in Table 2, which groups the complaints in three major categories.[22] The categories are based on ODI's analysis of all available information and not solely on the initial VOQ complaint text.

TABLE 2—ODI ANALYSIS OF PETITIONER SELECTED VOQ'S

Category	Description of category	Number of VOQs	Number of crashes	Supported by EDR pre-crash data
A	There is an alleged increase in engine power in which the brakes are allegedly unable to control: Incidents are caused by pedal misapplication or by a late braking effort of the driver.	105	93	17
B	Dual pedal application: The driver inadvertently applied both the brake and the accelerator simultaneously during the event.	28	2	0
C	Incidents that do not fit the alleged defect of ''engine surge in which the brakes fail to stop the vehicle in time to prevent a crash.''.	25	10	0

Category A: Category A complaints are those alleging simultaneous failures of the vehicle's braking ability and a sudden increase in engine power that the driver did not request by pressing on the accelerator pedal, with no evidence

[20] Pressing the brake pedal with a nominal force of 40 lbs or less would produce sufficient braking torque to overcome full/maximum drivetrain torque in all vehicles that have been evaluated by ODI to date.

[21] Three complainants were now deceased and in some cases the complainant was not the driver at the time of the incident.

[22] An itemization of VOQ number by Category is provided in the closing resume for this investigation, which can be obtained at *www.safercar.gov.*

of brake system malfunction observed in post-incident inspections/testing. These complaints fit the definition of ''sudden acceleration'' incident allegations as described in the background section of this report and fall within the scope of the petitioner's allegations. As discussed in previously in this report, these incidents fit the profile of pedal misapplications. Again quoting from the from the 2012 TRB report reviewing ODI's processes for investigating unintended acceleration: *''investigating for phenomena other than pedal misapplication absent an explanation for the ineffectiveness of the brakes, which are independent of the throttle control system and are designed to dominate engine torque, is not likely to be useful.* [164]''

As further confirmation of this assessment, some of the VOQs submitted by the petitioner had pre-crash EDR data available that show brake status, accelerator pedal voltage, engine speed and vehicle speed in the 5 seconds prior to the time of the collision trigger (if it was on a model year 2009 or later Corolla). This information, together with other relevant facts (*e.g.,* law enforcement reports, accident reconstruction, witness interviews), can be compared to the driver's statement regarding the use of foot controls and their alleged effectiveness prior to the collision.

TABLE 3—SUMMARY OF INCIDENTS WITH PRE-CRASH EDR DATA

Case No.	VOQ No.	Incident date	T_{-5} speed (mph)	ODI brake category A—misapply B—late apply C—no apply	Summary of driver allegation
1	10534094	Sep-11	45	B	Driving at night in rain, released accelerator, departed road, crashed into tree.
2	10334936	May-10	31	A	Approaching stop sign, applied brake, accelerated into fence.
3	10363685	Oct-10	31	C	Approaching stop sign, applied brake, accelerated into utility pole.
4	10523677	May-13	20	A	Approaching intersection, applied brake, accelerated into tree.
5	10352668	Mar-09	11	A	Entering parking space, applied brake, accelerated into parked vehicle.
6	10479582	Oct-12	10	A	Entering parking space, applied brake, accelerated into building.
7	10369494	Nov-10	8	A/B	Entering parking space, applied brake, accelerated into concrete post.
8	10344874	Jul-10	6	A	Entering driveway, applied brake, accelerated into iron fence.
9	10363886	Sep-10	6	A/B	Entering parking space, applied brake, accelerated into building.
10	10520195	Jun-13	6	A/B	Entering parking space, applied brake, accelerated over two curbs.
11	10551478	Oct-13	5	A	Entering parking space, applied brake, accelerated into dumpster.
12	10597296	May-14	4	A	Entering parking space, applied brake, accelerated into parked vehicle.
13*	10637908	Jun-14	4	A/B	Entering parking space, applied brake, accelerated into parked vehicle.
14	10507434	Apr-13	2	A	Entering parking space, applied brake, accelerated into building.
15	10552563	Oct-13	1	A	Entering parking space, applied brake, accelerated into parked vehicle.
16	10578871	Apr-14	1	A	Backing from parking space, lightly pressed accelerator, accelerated into vehicle.
17	10447756	Jan-12	0	A	Exiting parking space, applied brake, accelerated into brick wall.

*petition incident.

TABLE 4—SUMMARY OF BRAKE AND ACCELERATOR PEDAL USE IN INCIDENTS WITH PRE-CRASH EDR DATA.[23]

Case No.	T_{-5} speed (mph)	Brake switch status by EDR time interval						Accelerator pedal apply status by EDR time interval					
		−5	−4	−3	−2	−1	0	−5	−4	−3	−2	−1	0
2	31	Off	Off	Off	Off	Off	Off	High	High	High	High	High	High
6	10	Off	Off	Off	Off	Off	Off	Low	High	High	High	High	High
4	20	Off	Off	Off	Off	Off	Off	Low	Off	Low	High	High	High
16	1	Off	Off	Off	Off	Off	Off	Low	Low	Low	Med	High	High
14	2	Off	Off	Off	Off	Off	Off	Low	Low	Low	Low	High	High
8	6	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	High	High
12	4	Off	Off	Off	Off	Off	Off	Low	Low	Low	Low	High	Off
15	1	Off	Off	Off	Off	Off	Off	Off	Off	Low	Low	Low	High
10	6	Off	Off	Off	Off	Off	On	Low	Low	Off	Low	High	Off
11	5	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	High
5	11	Off	Off	Off	Off	Off	Off	Med	Med	Med	Med	Med	Med
17	0	Off	Off	Off	Off	Off	Off	Low	Low	Low	Low	Low	Med
7	8	Off	Off	Off	Off	Off	On	Low	Low	Low	Low	Med	Off
1	45	Off	Off	Off	Off	On	On	Low	Low	Low	Low	Off	Off
9	6	Off	Off	Off	Off	Off	On	Off	Off	Off	Off	Low	Off
13*	4	Off	Off	Off	Off	Off	On	Off	Off	Low	Off	Off	Off

TABLE 4—SUMMARY OF BRAKE AND ACCELERATOR PEDAL USE IN INCIDENTS WITH PRE-CRASH EDR DATA.[23]—Continued

Case No.	T_{-5} speed (mph)	Brake switch status by EDR time interval						Accelerator pedal apply status by EDR time interval					
		−5	−4	−3	−2	−1	0	−5	−4	−3	−2	−1	0
3	31	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off

* petition incident.

Summaries of the 17 crash incidents in which pre-crash EDR was available are provided in Tables 3 and 4. Table 3 provides a summary of the speeds the vehicles were traveling approximately 5 seconds prior to the collision events, ODI's assessment of the causes, and the incident driver's allegation of the sequence of events leading to the collision. Thirteen (13) of the incidents involved vehicles travelling at low-speeds in parking lot maneuvers, including 11 that occurred while parking the vehicle. Fifteen (15) of the incidents alleged that the acceleration began after the brake was applied.[24] These data are consistent with EDR data collected during the prior Toyota study in 2010, which included 39 incidents assessed as pedal misapplications due to no brake application or late braking, including 29 that initiated in parking lots or at low speeds.

ODI's assessments were based on the EDR download data and all available supporting information, as to the cause of the unintended acceleration event, *i.e.,* a pedal misapplication, a braking that occurred too late to in the event to effectively stop the vehicle in time (driver error), a combination of both, and in one case no application of accelerator or brake. Table 4 provides the EDR download information for brake and accelerator pedal information for the individual incidents. Twelve incidents showed no evidence of braking during the crash event, 4 do not show braking until the airbag trigger point, t = 0, and the final incident involved late transition from accelerator to brake for a vehicle travelling over 40 mph (Case #1).

These incidents are a representative sampling of the incidents alleging low-speed surging with ineffective brakes and demonstrate that driver statements regarding pedal use in such incidents are not reliable. It should be emphasized that in order for these 105 VOQs to be included in this category there must have been an alleged concurrent failure or weakness of the throttle and braking systems. No mechanism has been identified that could cause a sudden failure of both systems. No evidence of throttle or brake system faults were found in post-incident inspections of these vehicles and there is no indication of faults in those systems in the available service histories before and after the events. Based on this analysis, ODI does not believe there is evidence of a vehicle based defect in this category of complaints.

Category B: Category B complaints are incidents involving allegations of engine racing or surging during brake application. These incidents do not allege brake ineffectiveness and are therefore not within the scope of the petitioner's alleged defect. The common explanation for complaints alleging engine racing or surging during brake application is that the driver is inadvertently applying both the brake and accelerator pedals when intending to only apply the brake. This is particularly evident in complaints that indicate that engine races faster when the brake is pressed harder.[25]

Several drivers recognized that inadvertently stepping on both pedals was the cause of the engine surging they reported, either in the initial complaint or in subsequent interviews with ODI. For example, in a follow-up interview one owner (VOQ 10363529) noted that after a few incidents, ''I realized in that case that my foot was on both the brake and the accelerator. This may have been carelessness on my part. However, it being a compact car, the brake is very close to the accelerator. Perhaps closer that the other cars that I drive or have driven. No one else in our family has reported unintended acceleration with this car.''

A variation of dual application that increases the potential severity of such incidents involves unsecured floor mats that slide forward into a position where they can impede brake application. ODI identified two crashes involving drivers who had floor mats that had moved forward over the accelerator pedal and under the brake pedal such that when the brake pedal was applied the force was transferred through the floor mat to the accelerator pedal (in one case it was an aftermarket floor mat plus a bathroom rug).

Category C: Category C complaints are incidents that do not fit the alleged defect of ''engine surge in which the brakes fail to stop the vehicle in time to prevent a crash.'' Examples are instances of high idle at initial startup, transmission shift flares or delays in coast down idle. Two of the crashes in this category were due to vehicles being struck by following traffic which then propelled the vehicles forward uncontrollably. Four of the crashes were due to a lack of brake effectiveness, such as a soft brake pedal, without any corresponding engine surge, three of the crashes were due to the driver applying the accelerator pedal too aggressively without any brake application, and one crash was due to a medical condition experienced by the driver.

3.5 Low-Speed Surge Hazards

ODI agrees that uncontrolled vehicle accelerations in parking lot environments represent a clear safety hazard to surrounding traffic, pedestrians and even building occupants, as vehicles often accelerate inside of businesses with facing parking spaces where they have caused serious and sometimes fatal injuries. However, investigations have shown that these incidents are not isolated to any particular makes or models of vehicles and rarely have any vehicle based defects been identified in the throttle or brake systems in post-incident inspections.

As background, to put ODI complaints of low-speed surging during brake application in context, separate research conducted for NHTSA by the Highway Safety Research Center to examine the prevalence of crashes caused by pedal application errors found that they occur more frequently than is generally known and exhibit many of the same characteristics as the SA complaints received by ODI, although in much greater numbers. The study included a review of North Carolina state crash database records, which identified 2,411

[23] EDR reports with accelerator pedal data shown as voltage readings from 0.78 to 3.70V were converted as follows: Off = 0.78V; Low = 0.79 to 1.75V; Medium = 1.76 to 2.72V; and High = 2.73V and above.

[24] See supplemental report in the public file for this investigation (*www.safercar.gov*) for a discussion of some of the EDR downloads and associated VOQs, *Supplemental Report, DP14–003, EDR Examples.*

[25] These complaints further demonstrate the effectiveness of the brakes in overcoming engine power.

self-reported pedal misapplication crashes between 2004 and 2008, an average of approximately 480 per year.[26]

Projected nationally, the North Carolina data predict over 16,000 pedal error crashes per year, or about 44 incidents per day. These pedal error crash counts are likely conservative, since they are limited to self-reported incidents that were documented in law enforcement accident reports. The total number of pedal error incidents, including those in which the driver is not aware of the error (such as the petitioner's incident) are unknown and the there is no systematic process or database in the United States for tracking such events. An April 2012 summary of the study notes that 57 percent of pedal error crashes identified in the study occurred in parking lots or driveways, which projects to over 9,000 incidents per year in those driving environments nationwide.[27]

In addition, the Storefront Safety Council, an independent private organization focused on safety hazards associated with vehicle into building crashes, estimates that over 20,000 such crashes occur annually in the U.S. (60 per day), resulting in over 4,000 injuries and as many as 500 deaths.[28] The Storefront Safety Council identifies pedal error as the number one cause of these crashes at 35 percent (other causes include other types of operator error, such as confusing Drive and Reverse, impaired driving, medical conditions and deliberate building intrusions).

These data indicate that pedal error crashes are much more common than previously known, even well after the implementation of brake shift interlocks. The patterns associated with these incidents are similar to complaints to ODI and manufacturers alleging SA incidents when analyzed by: (1) Location; (2) vehicle dynamics; (3) driver demographics; and (4) vehicle design. Both occur predominantly in parking lots and driveways; both involve sudden increases in engine power, unchecked by braking, and coinciding with intended application of the brake; both disproportionately involve younger and older drivers; and both have occurred in vehicles with all forms of throttle and cruise control systems. As previously noted, the incidents were initially observed by ODI in vehicles with purely mechanical throttle control and no cruise control in the earliest years of NHTSA's safety defect enforcement program (EA78–010).

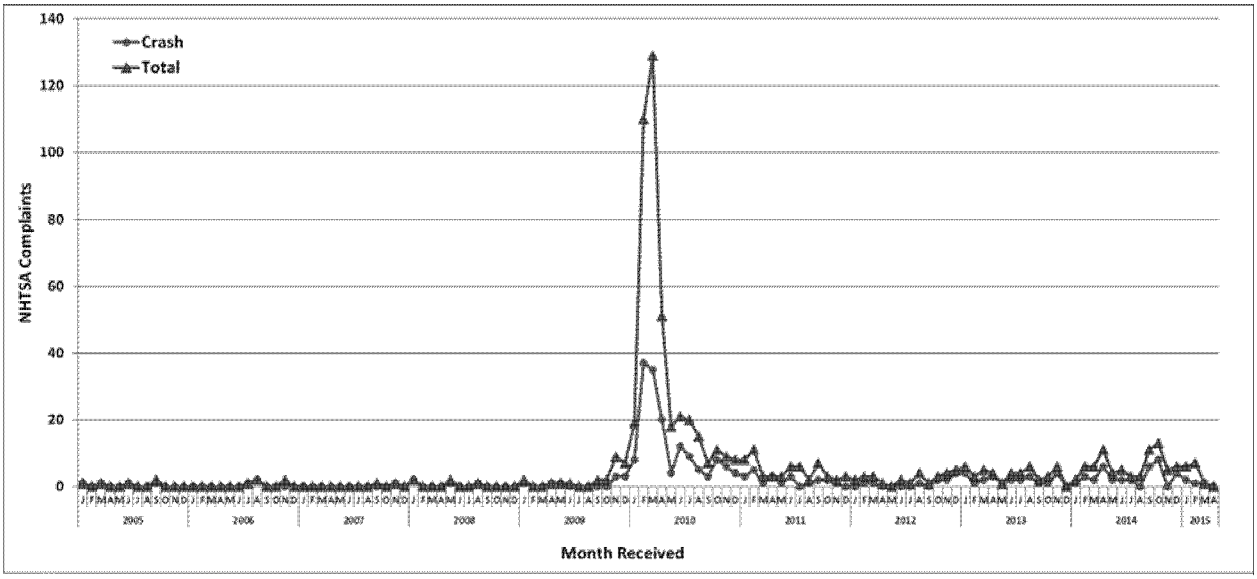

Figure 2. MY 2005-2015 Toyota Corolla Speed Control Complaints by Month Reported.

Complaints to ODI alleging SA related crashes are far less common. In the same period from 2004 through 2008 that the pedal error study identified over 2,400 pedal error related crashes in North Carolina police reports, ODI received less than 40 complaints alleging SA crashes in North Carolina in all light vehicles—or less than 2 percent of the number of crash incidents identified in the pedal error study. However, publicity can significantly increase ODI complaint volumes, as is evident for Toyota Corolla vehicles equipped with ETCS-i, which saw a 7,900% increase in speed control complaints alleging crashes and a 12,800% increase in total speed control complaints from the first quarter of 2009 to the first quarter of 2010, after news media coverage of Toyota's pedal entrapment and sticky pedal recalls (Figure 2). Each of these factors, as well as the incident characteristics used for identifying complaints likely to be related to a common cause (see Section 2.1, *Definitions*), must be considered before conducting any analysis of, or drawing any conclusions regarding, SA rates or trends based strictly upon ODI complaint data.

These data support the petitioner's claim that uncontrolled vehicle accelerations in parking environments are a public safety issue but are not evidence of a motor vehicle defect and, therefore, do not support the opening of a defect investigation.

4.0 Conclusion

In our view, a defects investigation is unlikely to result in a finding that a defect related to motor vehicle safety

[26] Lococo, K., Staplin, L., Martell, C., and Sifrit, K. 2012. *Pedal Application Errors.* Report DOT–HS–811–597. TransAnalytics, LLC and Highway Safety Research Center, U.S. Department of Transportation. *www.nhtsa.gov/staticfiles/nti/pdf/811597.pdf.*

[27] NHTSA. 2012. *Pedal Error Crashes.* Report DOT–HS–811–605. Traffic Tech. U.S. Department of Transportation. (1). *www.nhtsa.gov/staticfiles/traffic_tech/811605.pdf.*

[28] *Storefront Safety Council—working to end vehicle into building crashes. http://www.storefrontsafety.org/.*

exists or a NHTSA order for the notification and remedy of a safety-related defect as alleged by the petitioner at the conclusion of the requested investigation. Therefore, given a thorough analysis of the potential for finding a safety related defect in the vehicle and in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission and mitigate risk, the petition is respectfully denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

Authority: 49 U.S.C. 30162(d); delegations of authority at 49 CFR 1.50 and 501.8.

Frank S. Borris, II,

Acting Associate Administrator for Enforcement.

[FR Doc. 2015–11632 Filed 5–13–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0082 (Notice No. 15–13)]

Hazardous Materials: Information Collection Activities

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on its intention to revise an information collection under Office of Management and Budget (OMB) Control Number 2137–0628, ''Flammable Hazardous Materials by Rail Transportation''. This reporting requirement would require tank car owners to report their progress in the retrofitting of tank cars to the Department of Transportation (DOT).

DATES: Interested persons are invited to submit comments on or before July 13, 2015.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2012–0082) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov.* Please note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public. 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.*

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for revision. This information collection request is contained in 49 CFR part 174 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised the burden estimate, where appropriate, to reflect current reporting levels or adjustments based on changes described in this notice. The following information is provided for the information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for the information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collection:

Title: Flammable Hazardous Materials by Rail Transportation.

OMB Control Number: 2137–0628.

Summary: This information collection pertains to requirements for the creation of a sampling and testing program for mined gas or liquid and rail routing for High Hazard Flammable Trains (HHFTs),[a] routing requirements for rail operators, and the reporting of incidents that may occur from HFFTs.

In the final rule entitled ''Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains'' PHMSA and FRA adopted a risk-based timeline for the retrofit of existing tank cars to meet an enhanced CPC–1232 standard when used as part of an HHFT. The retrofit timeline focuses on two risk factors, the packing group and differing types of DOT–111 and CPC–1232 tank cars. The timeline provides an accelerated risk reduction that more appropriately addresses the overall risk. The timeline is provided in the §§ 173.241, 173.242, and 173.243 tables of the final rulemaking (80 FR 26643) and includes a January 1, 2017 deadline for of non-jacketed DOT–111 tank cars in PG I service in an HHFT. Not adhering to the January 1, 2017 deadline would trigger a reporting requirement.

This reporting requirement would require owners of non-jacketed DOT–111 tank cars in Packing Group I service in an HHFT to report to DOT the following information regarding the retrofitting progress:

- The total number of tank cars retrofitted to meet the DOT–117R specification;
- The total number of tank cars built or retrofitted to meet the DOT–117P specification;
- The total number of DOT–111 tank cars (including those built to CPC–1232 industry standard) that have not been modified;

[a] An HHFT means a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist.

• The total number of tank cars built to meet the DOT–117 specification; and

• The total number of tank cars built or retrofitted to a DOT–117, 117R, or 117P specification that are Electronically Controlled Pneumatic (ECP) brake ready or ECP brake equipped.

Although this reporting requirement applies to individual owners of non-jacketed DOT–111 tank cars in PG I service in an HHFT, DOT would accept a consolidated report from a group representing the affected industries. Furthermore, while not adhering to the January 1, 2017 retrofit deadline triggers an initial reporting requirement, it would also trigger a requirement which would authorize the Secretary of Transportation to request additional reports of the above information with reasonable notice.

We estimate that this additional requirement will result in a revised information collection and recordkeeping burden as follows:

OMB No. 2137–0628, ''Flammable Hazardous Materials by Rail Transportation''

Additional Burden request:

Additional Number of Respondents: 50.

Additional Annual Responses: 50.

Additional Annual Burden Hours: 25.

Additional Total Annual Burden Cost: $1,000.

Revised Total First Year Burden:

Revised Total Annual Number of Respondents: 2,039.

Revised Total Annual Responses: 2,609.

Revised Total Annual Burden Hours: 103,814.

Revised Total Annual Burden Cost: $7,384,633.55.

Revised Subsequent Year Burden:

Revised Total Annual Number of Respondents: 2,039.

Revised Total Annual Responses: 2,609.

Revised Total Annual Burden Hours: 29,054.

Revised Total Annual Burden Cost: $2,038,988.

Signed in Washington, DC, on May 11, 2015.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2015–11625 Filed 5–13–15; 8:45 am]

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FEDERAL REGISTER

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Part II

The President

Proclamation 9279—National Women's Health Week, 2015

Federal Register
Vol. 80, No. 93
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Presidential Documents

Title 3—

The President

Proclamation 9279 of May 11, 2015

National Women's Health Week, 2015

By the President of the United States of America

A Proclamation

The security of quality, affordable health care should not be a privilege—it should be a fundamental right for every person, regardless of their sex or gender. Today, the Affordable Care Act is helping to secure this right for women across our Nation. The law is saving money for women and their families, and it is saving lives—of our mothers, daughters, and sisters—and helping more women achieve their fullest potential. During National Women's Health Week, we reaffirm the belief that ensuring all women and girls have the opportunity to live full and healthy lives is vital to their success and to the prosperity of our Nation; we celebrate the difference the Affordable Care Act has made for countless women; and we recommit to building on its success because we know that when women succeed, America succeeds.

Over the past year, millions of women have gained the security of knowing their personal and professional goals will not be jeopardized just because they face a health challenge. Because of the Affordable Care Act, women can no longer be charged different premiums than men for the same coverage or be denied insurance based on pre-existing conditions, such as pregnancy or violence-related injuries. The law also requires most insurance plans to cover basic health services, including contraceptive, prenatal, and maternity care. And today, tens of millions of women are benefiting from expanded access to preventive care under the law—services which can lead to early detection of some of the many health challenges that disproportionately affect women. Because these preventive services—like screenings for breast cancer, domestic violence, and osteoporosis—are available without cost sharing, women are not forced to choose between health care necessities and other essential expenses.

The equality that all women deserve is inextricably linked to safeguarding access to preventive services and treatment and eliminating disparities in health outcomes. My Administration is committed to strengthening the Affordable Care Act, and we are striving to reach all those who have yet to enroll and gain access to the crucial services it provides. Every day, we are working to make women's health care more affordable, increase women's access to sexual and reproductive health services, and improve maternal and child health outcomes.

As we celebrate National Women's Health Week, we rededicate ourselves to advancing women's health and building a healthy future for all women and girls across our country. To learn more and to access additional information and resources, Americans can visit www.WomensHealth.gov and www.GirlsHealth.gov.

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 May 10 through May 16, 2015, as National Women's Health Week. I encourage all Americans to celebrate the progress we have made in protecting women's health and to promote awareness, prevention, and educational activities that improve the health of all women.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of May, 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. 2015–11890
Filed 5–13–15; 11:15 am]
Billing code 3295–F5

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